

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 263.

JOSE J. BENITEZ DIAZ, IN HIS OWN RIGHT AND AS
FATHER WITH PATRIA POTESTAS, ETC., *ET AL.*, PETI-
TIONERS,

vs.

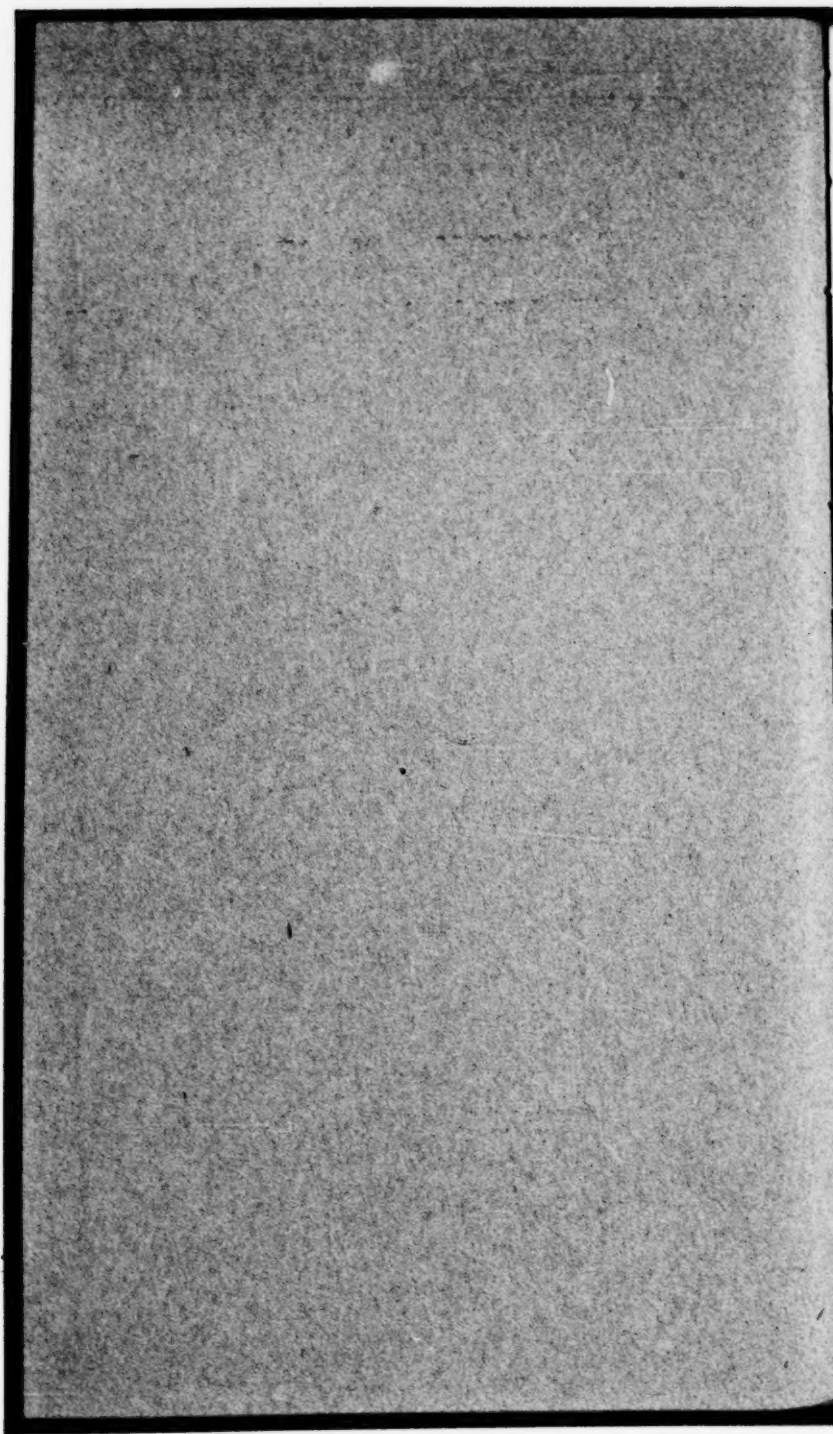
CARLOTA AND CLEMENTINA GONZALEZ Y LUGO, REPRESENTED BY THEIR *GUARDIAN AD LITEM*, ARTURO APONTE, Jr., *ET AL.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 31, 1923.

CERTIORARI AND RETURN FILED APRIL 22, 1922.

(28,683)



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1 United States Circuit Court of Appeals for the First Circuit,
October Term, 1920.

No. 1478.

CARLOTA GONZALEZ LUGO et al., Plaintiffs, Appellants,

v.

JOSE J. BENITEZ et al., Defendants, Appellees.

TRANSCRIPT OF RECORD ON APPEAL.

[Filed in Circuit Court of Appeals September 7, 1920.]

In the Supreme Court of Porto Rico.

Civil. No. —.

CARLOTA and CLEMENTINA GONZALEZ Y LUGO, Represented by Their
Guardian ad Litem, Arturo Aponte, Jr., and Manuel Gonzalez y
Lugo, Plaintiffs and Appellees,

v.

JOSE J. BENITEZ and His Wife, CARLOTA SAMPAYO GUZMAN,
Clementina Lugo Calzada, Maria and Manuela Gonzalez y Lugo,
Prudencio Eugui Barriola, Diego Garcia y Ortega, and Aristides
Gonzalez y Lugo, Defendants and Appellants.

Appeal from the District Court of Ponce, P. R.

Nullity, etc.

Stipulation.

In view of the ruling of the court the parties have entered into the
following agreement:

2 First. That the trial hereinbefore held be declared null
and void and that the exhibits filed be returned, except the
admission dictated by the parties to the stenographer of this court
to the effect that after becoming of age Aristides Gonzalez Lugo rati-
fied, in so far as he was concerned, the sale of his share to Jose J.
Benitez Diaz, the said sale having been made by a deed of June 5,
1908.

Second. That a period of fifteen days be allowed the plaintiff for
making any such amendments as he may deem proper to the present
amended complaint, or for preparing another amended complaint
in a single pleading, joining new parties defendants, eliminating
some of the plaintiffs, or joining others as he may be advised.

Third. That both parties to this suit, as well as the representative of Diego Garcia y Ortega, be served with copies of this amended complaint as aforesaid, and that a period of 15 days be allowed the said parties for answering said amendments, or amended complaint.

Fourth. That the court appoint Arturo Aponte, Jr., as guardian ad litem of the minor plaintiffs in this suit, Manuel, Carlota and Clementina Gonzalez Lugo, in the place of Aristides Gonzalez Lugo, for the reason that the latter may perhaps be made a party plaintiff.

Fifth. It is likewise stipulated by the parties that within six days plaintiff Benitez Diaz shall pay directly, without any action on the part of the court or of any attorney in this case, to Clementina Lugo Calzada the sum of \$75.00, as mother with patria potestas over the three minor plaintiffs, for the expenses incurred by the plaintiffs in their trip to Ponce.

Sixth. And, finally, that the exhibits filed be returned to the plaintiff.

Ruling of the Court.

The said stipulation is approved by the court so that it becomes the law between the parties, and it is hereby ordered that a literal copy of this stipulation be sent to each of the attorneys for the parties.

And the court hereby expressly appoints Arturo Aponte, Jr., as guardian ad litem of the minors Manuel, Carlota and Clementina Gonzalez Lugo for all the purposes of this suit, it being made known that forthwith Arturo Aponte, Jr., was duly sworn to discharge his duties faithfully.

Ponce, P. R., January 25, 1916.

DOMINGO SEPULVEDA,

District Judge.

I, Manuel Muniz Cintron, stenographer of the District Court for the Judicial District of Ponce, P. R., do hereby certify that the foregoing stipulation is a true and exact transcript of what was dictated in open court by the attorney for the plaintiff in this case and for the delivery by order of the court, of a true copy of this stipulation to each of the attorneys for the parties, I issue this at Ponce, P. R., this twenty-fifth day of January, 1916.

M. MUNIZ CINTRON,

Stenographer of the District Court.

Amended Complaint.

Now comes the above-named plaintiff and by leave of the court previously obtained alleges:

I. That plaintiff Arturo Aponte, Jr., is of age and appears as guardian ad litem and in representation of the minors Carlota and Clementina Gonzalez Lugo, having been duly and lawfully ap-

pointed as such by this court, and the other plaintiff, Manuel Gonzalez y Lugo, appears in his own right.

II. That on and before June 5, 1908, the two minor plaintiffs as well as plaintiff Manuel Gonzalez Lugo were and continue to be under the law the owners in common and pro indiviso of three-sixths of an undivided half of each of the three following properties:

(a) Rural Property. A farm called "Los Puentes" situated in a place of the same name in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 36.223 cuerdas, equivalent to 14 hectares and 23 ares, of mostly valley land, crossed by a road, bounded on the north by lands of Juan Buso and the Blanco river, which separates it from the land of Cercado Ramirez, now of Garzot and Fuertes; on the east by said Blanco river, the land of said Cercado Ramirez and the lands of Francisco Buso, at right angles with the river Anton Ruiz; on the south by land of Francisco Buso, at right angles with the river Anton Ruiz, and on the west by lands of Juan Buso, at right angles with said river Anton Ruiz.

(b) A property known as "Islote Quinones" situated in the Ward of Rio Abajo of the municipality of Naguabo, composed of 88.95 cuerdas, equivalent to 34 hectares and 23 ares, bounded on the north by the Viejo river, which separates it from the land of Maldonado now of Palmer, and from lands of Torres, now of Petronila Patricia Rios; on the east by lands of Carmen Fuentes; on the south by the river Blanco of Naguabo, which separates it from lands of the succession of Jose Rios y Berrios, and on the west by the said river, the "Mulas" plantation and the Torres property.

(c) A farm called "Madama Duran" situated in the Ward of Rio Abajo" of the municipality of Naguabo, composed of 107.468 cuerdas, equivalent to 42 hectares and 24 ares, of low and mountain land, bounded on the north by the Blanco river, which separates it from the Ramirez property, now the property of Garzot and Fuertes, and, in part, of lands of the succession of Ramon Argueso; on the east partly by the said Blanco river, which separates it from the Ramirez property and part of the lands of Juan Buso; on the south by lands of Juan Buso, and on the west by lands of the succession of Ramon Argueso.

The said plaintiffs acquired the said condominiums by testate inheritance from their deceased father, Manuel Gonzalez Fernandez, the properties described having been recorded in the names of the plaintiffs and other persons mentioned in the next paragraph by hereditary right at folio 140, reverse, volume 13, of Naguabo, property No. 454, duplicate, entry 9th, as to the first at folio 24, reverse, volume folio 23, volume 11 of Naguabo property No. 453, entry 9th, as to the last, the said undivided interests having been awarded to them in the corresponding public deed of partition which was executed and extended by the interested parties before this date.

III. That the remaining shares in the said properties, on and before June 5, 1908, belonged to defendants Clementina Lugo Calzada and Aristides, Maria and Manuela Gonzalez y Lugo under the same title as that of the plaintiffs as set forth in the preceding paragraph, and the said persons have been made co-defendants because they did not consent to be joined as parties plaintiffs in this suit.

IV. That in San Juan, P. R., on June 5, 1908, before notary Antonio de Aldrey, of Humacao, Maria and Manuela Gonzalez y Lugo and Clementina Lugo y Calzada, the said Clementina, in her own right and in representation of her then minor children under her patria potestas, plaintiffs Manuel, Carlota and Clementina Gonzalez y Lugo, executed the public deed of purchase and sale No. 68 and co-defendant Aristides Gonzalez y Lugo, in favor of Jose J. Benitez y Diaz, who was then married to co-defendant Carlota Sampayo y Guzman, and by that deed the first two vendors conveyed to said defendant Benitez Diaz their respective shares in the three properties described, and the undivided interests and rights in the said three properties of the said three plaintiffs, as set out in the second paragraph of this complaint, were likewise conveyed to him by Clementina Lugo y Calzada as the mother of the said three plaintiffs, who then were all minors, all for the lump sum of seventeen thousand, six hundred dollars (\$17,600). The said deed was recorded in the Registry of Property of Humacao, P. R., at folio 141, volume 10 of Naguabo, property No. 454, duplicate, entry 10th, as to the first property; at folio 242, reverse volume 10 of Naguabo, property No. 456, duplicate, entry 9th, as to the second, and at folio 24, volume 11 of Naguabo, property No. 453, duplicate, entry 10th, as to the third property.

V. That in order to make the said sale in the names of the said plaintiffs co-defendant Clementina Lugo y Calzada did not obtain the corresponding authorization of the court of jurisdiction, which was the District Court for the Judicial District of Humacao, P. R., within which the municipality of Naguabo was included on and before June 5, 1908, and in which, at that time and now, the said three properties so sold and purchased were and are situated; but for that purpose she petitioned for and obtained, on May 27, 1908, a so-called authorization from the District Court of San Juan, P. R., Section 1, which authorization was and is null and void ab initio because the said court had no jurisdiction of the matter, consequently the said sale, in so far as concerns the said plaintiffs, is also null and void and that fact was known to Jose J. Benitez before the execution of the aforesaid deed of purchase and sale.

VI. That according to the information and belief of the plaintiffs the said Jose J. Benitez has been unlawfully in possession, without good faith or colorable title, of the said undivided shares belonging to the plaintiffs in the said three properties since June 5, 1908, the rents and profits of the said undivided shares during the time the plaintiffs have been deprived of their possession and enjoyment,

amounting to the estimated sum of eight thousand, five hundred dollars, which the said defendant has unlawfully appropriated to himself.

VII. That according to the information and belief of the plaintiffs, the said undivided portions belonging to said plaintiffs in the three described properties have now a value of more than ten thousand dollars.

VIII. That by a deed of March 18, 1910, executed before notary Antonio de Aldrey, defendant Jose J. Benitez and his said wife leased the property described under letter (b) to co-defendant Prudencio Eugui y Barriola for a term of ten years, the facts alleged under counts IV and V of this complaint appearing from the Registry of Property of Humacao and being known to the said lessee before the execution of the said deed of lease, which was recorded at folio 173, reverse, volume 13 of Naguabo, property No. 456, triplicate, entry 10th.

IX. That by a public deed executed before notary Francisco Gonzalez Fagundo on June 7, 1913, the said defendant Benitez Diaz and his said wife created a voluntary mortgage on the said three described properties in favor of defendant Diego Garcia y Ortega to secure him the sum of \$15,000, the facts alleged under counts IV and V of this complaint appearing from the Registry of Property of Humacao and being known to the said mortgagee before the execution of the said mortgage deed, which was likewise recorded in the Registry of Property of Humacao, P. R.

X. That the original complaint in this case was filed in the court on September 8, 1913.

7 Wherefore, the plaintiffs pray that after due process of law judgment be rendered in favor of plaintiffs and against the defendants as follows:

(1) That the authorization granted by the District Court of San Juan, Section 1, on May 29, 1908, referred to in count V, as well as the deed of purchase and sale of June 5, 1908, referred to in count IV of this complaint, in so far as they affect the said interests of the said three plaintiffs in the properties described, are absolutely null and void and without legal effect, ordering the cancellation of the record of such purchase and sale as to the said condominiums of the said three plaintiffs.

(2) That the said three plaintiffs are the owners in common pro indiviso of three-sixths of an undivided half of the three described properties, ordering a division of the said property held in common by the three plaintiffs and defendant Jose J. Benitez and the delivery by the latter to the former of such portions as may be shown to belong to them.

(3) That the deeds of lease and mortgage referred to in counts VIII and IX of the complaint are nul and void and without legal

effect in so far as they may affect the said rights of the plaintiffs in the said properties, ordering the cancellation of the records of the said deeds as regards the shares of the said three plaintiffs in the said properties.

(4) That the said defendant Jose J. Benitez owes and shall pay to the said plaintiffs the sum of eight thousand and five hundred dollars as the rents and profits of their said interests and that the said defendant and all others opposing this suit shall pay the costs, disbursements and plaintiffs' attorney fees, and that the court grant any other relief consistent with the allegations of this complaint.

Ponce, P. R., January 26, 1916.

JOSE A. AND ALBERTO S. POVENTUD,
By JOSE A. POVENTUD,
Of Counsel, Attorneys for the Plaintiffs
Carlota Gonzalez, Clementina Gonzalez.

Arturo Aponte, Jr., being duly sworn, says: That he is the guardian ad litem of the plaintiffs in this suit; that he has
8 read the foregoing complaint and, according to his information and belief, the facts therein alleged are true, except those alleged on information, which he believes to be true.

ARTURO APONTE, JR.,
Affiant.

Affidavit No. 825. Sworn to and subscribed before me by Arturo Aponte, Jr., of age, married, attorney-at-law and farmer, a resident of Humacao, P. R., whom I personally know, this twenty-sixth day of January, 1916.

M. TOUS SOTO,
Notary Public.

(Internal Revenue stamp, cancelled.)

Filed this twenty-sixth day of January, 1916.

JOSE ROSARIO GELPI,
Clerk,
By A. GOTAY PURCELL.

Answer of Clementina Lugo, Aristides, Maria and Manuela Gonzalez Lugo.

Now come defendants Clemintina Lugo Calzada and Aristides, Maria and Manuela Gonzalez y Lugo, after having been summoned with a copy of the amended complaint filed in the above-entitled cause, and in answer to the said amended complaint jointly and severally allege:

I. That, according to their information and belief, the facts recited in said amended complaint are true and, as to the allegation that the

plaintiffs are now the co-owners of the properties in litigation, these defendants lack information, the matter being a question of law.

January, 1916.

ARISTIDES GONZALEZ,
MARIA GONZALEZ Y LUGO.
CLEMENTINA L.,
Widow of Gonzalez.
MANUELA GONZALEZ LUGO.

Filed February 1, 1916.

JOSE ROSARIO GELPI,
By A. GOTAY PURCELL,
Deputy Clerk.

9 *Answer of Diego Garcia Ortega.*

Now comes defendant Diego Garcia Ortega by his attorney, Francisco Gonzalez Fagundo, and answering the complaint alleges:

First. He admits that the first count is true.

Second. He denies that the plaintiffs are the owners of three-sixths of an undivided half of the three properties described in the second count of the complaint.

Third. That the third count is true.

Fourth. That the fourth count is true.

Fifth. He denies that the authorization of the District Court of San Juan, referred to in the 5th count, is null and void and also denies that the sale made to Jose J. Benitez is null and void.

Sixth. He denies the seventh count for lack of information.

Seventh. He admits as true the ninth count in so far as it refers to the creation of the mortgage and to the amount of the loan, but denies that any mortgage was created on the property "Los Puentes," and also denies the other matters set up in the said count.

Eighth. As a defense it is alleged:

(a) That the minor plaintiffs profited and were benefited by the sale of the properties to Jose J. Benitez.

(b) That on June 7, 1913, and now, Diego Garcia Ortega was and is married to Genoveva Andino Solar.

(c) That on June 7, 1913, it did not appear from the Registry of Property of Humacao that any petition had been presented or any order made declaring the nullity of the deed of June 5, 1908, executed in favor of Jose J. Benitez.

(d) That the complaint does not state facts sufficient to constitute a cause of action.

Wherefore, he prays for judgment dismissing the complaint with costs, disbursements and attorney fees against the plaintiffs.

Humacao for Ponce, February 10, 1916.

FRANCO. GONZALEZ,
Attorney for Diego Garcia Ortega.

10 ISLAND OF PORTO RICO,
District of Humacao, ss:

Francisco Gonzalez Fagundo, having been duly sworn, says: That he is the attorney for Diego Garcia y Ortega; that the foregoing answer was prepared by him and that the facts therein alleged are true, which he knows on information which he believes to be true; that his client does not verify it because he is absent from the Island of Porto Rico.

Humacao, P. R., February 10, 1916.

FRANCO. GONZALEZ.

Sworn to and signed before me by Francisco Gonzalez Fagundo, attorney at law, of age, resident of Humacao, married, property owner, whom I personally now, at Humacao, this tenth day of February, 1916. Entered under No. 116.

FERNANDO VAZQUEZ,
Notary Public.

(Cancelled stamp.)

ISLAND OF PORTO RICO,
District of Humacao, ss:

I, Luis E. Sanchez, on oath declare: That I am a resident of Humacao, P. R., as is attorney Francisco Gonzalez Fagundo; that there is a regular daily mail service between Ponce and Humacao; that on this tenth day of February, 1916, I deposited in the post office of Humacao an envelope containing a true and exact copy of the answer to the foregoing complaint, the said envelope being addressed to Jose A. Poventud at his residence and office in Ponce, P. R. Postage thereon was prepaid.

Humacao, P. R., February 10, 1916.

LUIS E. SANCHEZ.

Sworn to and signed before me by Luis E. Sanchez, a resident of Humacao, of age, clerk, whom I personally know, at Humacao, this tenth day of February, 1916. Entered under No. 117.

FERNANDO VAZQUEZ,
Notary Public.

(Cancelled Stamp.)

Filed February 12, 1916.

JOSE ROSARIO GELPI,
Clerk,

By A. G. PURCELL,
Deputy.

11 *Default of Defendant Prudencio Eugui.*

Now come the above-named plaintiffs by their attorneys and move as follows:

First. That the said Prudencio Eugui, co-defendant in this suit, was duly and lawfully summoned, with a copy of the original complaint filed in this case, as appears from the record of this action which contains the original summons duly returned and filed.

Second. That the said co-defendant, although summoned as aforesaid, did not answer, demur, or plead to the complaint filed by the plaintiffs within the statutory period, the plaintiffs having therefore suggested the default of the said co-defendant.

Third. That on January 26, 1916, the plaintiffs, by permission previously requested to and obtained from the court, amended their said complaint, a copy of which was delivered to the said co-defendant Prudencio Eugui on February 7, 1916, as appears from the return attached to the record.

Fourth. That from the date of said notification up to this time more than fifteen days, and even more than six months, have elapsed, and the said co-defendant has filed no pleading in this case.

Wherefore, the said plaintiffs move that the default of said co-defendant Prudencio Eugui be entered in this suit.

Ponce, April 19, 1917.

JOSE A. AND ALBERTO S. POVENTUD,
By ALBERTO S. POVENTUD,
Attorneys for Plaintiffs.

Filed April 19th, 1917.

JOSE ROSARIO GELPI,
Clerk,
By A. GOTAY PURCELL,
Deputy Clerk.

Order for Entry of Default.

The plaintiffs having moved for an entry of the default of co-defendant Prudencio Eugui y Barriola:

Whereas: The said co-defendant was duly and lawfully summoned in this suit and has not filed within the statutory period any pleading to the said original complaint and therefore his default has been suggested as appears from the record of this case;

12 Whereas: The plaintiffs presented and filed, after having previously requested and obtained the leave of the court, their amended complaint, which was served on the said co-defendant Prudencio Eugui Barriola by copy on February 7, 1916, as appears from return attached to the record;

Whereas: More than fifteen days, and even more than six months, have elapsed since the date of said service and the said co-defendant Prudencio Eugui y Barriola has not filed any demurrer, answer, or other pleading to the amended complaint above referred to;

Therefore: The default of said co-defendant Prudencio Eugui y Barriola is hereby entered and filed according to law. Which I certify under my signature this nineteenth day of April, 1917.

JOSE ROSARIO GELPI,
*Clerk of the District Court for the
Judicial District of Ponce, P. R.,*
By A. GOTAY PURCELL,
Deputy Clerk.

Answer of Jose J. Benitez.

Your Honor: Jose J. Benitez Diaz and his wife, Carlota Sampayo y Guzman, defendants in the above-entitled cause, come by their attorneys, Diaz Navarro and Rivera Zayas, and in answer to the complaint allege as follows:

First. They admit the allegation of the first count of the complaint as to the personality and representation of Arturo Aponte, Jr., of the minors Carlota and Clementina Gonzalez Lugo.

Second. These defendants deny the following allegations of the second and third counts of the complaint: (a) That on and before June 5, 1908, the two minor plaintiffs and plaintiff Manuel Gonzalez Lugo were and are in law the owners in common and pro indiviso of three-sixths of an undivided half of each of the three rural properties described in the second count of the complaint; (b) that said three-sixths parts were acquired by them by testate inheritance from their deceased father; (c) that their interests appear of record in the registry of property by title of adjudication made in the corresponding public deed of partition executed and extended by the interested parties before the complaint was filed.

13 Third. These defendants in turn allege:

First. That Manuel Gonzalez y Fernandez acquired the three said properties by purchase from Santiago R. Palmer and his wife, Catalina Romaguera, by a public deed executed in San Juan on August 6, 1904, before notary Julio Cesar Gonzalez, which is recorded in the Registry of Property of Humacao.

Second. That Manuel Gonzalez y Fernandez died on March 19, 1904, leaving a will made on March 17, 1904, before notary Santiago R. Palmer, in which he designated as his sole and universal heirs in equal portions his six children born of his marriage with Clementina Lugo Calzada and named Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo, and his said wife as to the part assigned her by the law, and declared also that all of his properties were ganancial. The said members of the Gonzales succession instead of proceeding to make an inventory, appraise-

ment, liquidation, partition and award of the estate and obtaining the court's approval of the same, presented in the Registry of Property of Humacao a copy of the said will, a certificate of the death of the testator and a petition for a record, in common pro indiviso and without specifying the share corresponding to each one of the interested parties, of the aforesaid three properties in the names of the widow, Clementina Lugo Calzada, of the said children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo. The record was so made on June 12, 1908.

Third. That there is no record or mention in the Registry of Prop-— city of Humacao under any date of an inventory, appraisal, liquidation, division and award of the three said properties of the estate left by the said deceased Manuel Gonzalez y Fernandez of which mention is made in the complaint.

Fourth. As to the allegations of the fourth count of the complaint, these defendants admit that, according to a public deed executed in San Juan on June 5, 1908, before notary Antonio de Aldrey, by Clementina Lugo Calzada in her own right and in representation of her then minor and unemancipated children Manuel, Carlota, Clementina and Aristides Gonzalez Lugo, by Maria and Manuela Gonzalez Lugo and by Jose J. Benitez Diaz, then married to Carlota Sampayo y Guzman, the former parties sold to
14 Benitez Diaz the whole of the three properties in litigation for the lump sum of \$17,600, the said deed having been recorded in the Registry of Property of Humacao and the vendors having received the aforesaid sum.

Fifth. As to the allegations of the fifth count of the complaint, we admit that Clementina Lugo Calzada, in order to make the said sale in the names of her then minor children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, did not ask for authorization from the District Court for the Judicial District of Humacao, wherein the properties are situated, and we admit also that for that purpose she asked and obtained, on May 29, 1908, such authorization from the District Court of San Juan, Section 1, but we deny that that authorization was or is null and void because the said court had no jurisdiction, or that, consequently, the said sale is also null and void with regard to the plaintiffs, or that these facts were known to defendant Jose J. Benitez prior or subsequent to the execution of the said deed of purchase and sale.

And we allege on our part that, even if Judge Aldrey had had no jurisdiction when he made the order in question, that order was validated later by decisions of the Supreme Court of Porto Rico.

Sixth. We deny the allegations of the sixth count of the complaint that since June 5, 1908, Benitez has been in possession unlawfully and without faith or color of title of the said undivided interests of the said minors in the three properties described. We deny that the rents and profits corresponding to such shares during the time specified in the complaint amount to \$8,500, or that Benitez has unlawfully appropriated them. And instead we allege:

That by a deed executed in Humacao on the 2nd of September, 1914, before notary Francisco Gonzalez Fagundo, which is recorded in the Registry of Property, Jose J. Benitez with the consent of his wife, Carlota Sampayo, sold the property referred to under letter (a) in the second count of the amended complaint to Manuel Rodriguez Gonzalez, Jose R. Fuertes, married to Mercedes Garzot, and Faustino R. Fuertes, married to Carmen Garzot, who have been the actual possessors and owners of the said property from the said date until now.

That by a public deed executed in Humacao on October 3, 1913, before notary Francisco Gonzalez Fagundo, which is recorded
15 in the Registry of Property, defendant Benitez, with the consent of his wife, sold the property described under letter (b) of the second count of the complaint to Cristina Alvarez y Garriga, married, property owner and resident of Naguabo, who since then has been and is now the only possessor and owner of the property.

That by a public deed executed in Humacao on September 2, 1914, before notary Francisco Gonzalez Fagundo, which is recorded in the Registry of Property, defendant Benitez, with the consent of his wife, sold the property described in the second count of the complaint under letter (c) to said Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr., who have been the owners and possessors of the property since the said date.

That in purchasing the properties in litigation, and especially the shares of the minors in them, Jose J. Benitez acted in the firm belief that the order of the District Court of San Juan, of May 29, 1908, was, as it is, an order authorized by law under which the said contract could be lawfully entered into, as it was.

Seventh. The seventh allegation of the complaint, that the undivided interests in the three properties in litigation now have a value of more than ten thousand dollars, is denied for lack of information and belief.

Eighth. As to the allegation of the 8th count of the complaint, we admit it, except that what is there alleged was known to Prudencio Eugui, which we deny, inasmuch as the title of the lessor had absolutely no fatal defect.

Ninth. We admit the allegations of the 9th count of the complaint as regards the mortgage therein mentioned, but we deny that the mortgagee had any knowledge that the title of the mortgagor had any fatal defect, for it had not and has not.

Tenth. We admit that the original complaint in this case was filed in the clerk's office of the court on September 8, 1913.

Eleventh. And these defendants also allege that, as it appears from the registry of property, the properties in question are subject to a mortgage in favor of the People of Porto Rico as security for certain notaries.

Twelfth. And these defendants allege that on account of the foregoing allegations of this answer the following persons
16 are necessary parties to this suit: Manuel Rodriguez Gonzalez, Jose R. Fuertes, Mercedes Garzot, Faustino R. Fuertes, Cristina Alvarez y Garriga and the People of Porto Rico.

Thirteenth. These defendants also allege that the complaint does not state facts sufficient to constitute a cause of action as to them.

Fourteenth. They further allege as a reconvention that the said sale of the undivided shares belonging to the minor plaintiffs was made, on account of the urgent necessity in which they then were of paying contracted debts, among them, costs and attorney fees in a suit brought by them to defend the properties in question; and we further allege that the sale was necessary and beneficial and that they profited by the purchase price, which was used for paying the aforesaid debts and to save their titles to these properties, because they thus avoided attachments and forced sales in suits for the said debts.

Therefore, these defendants respectfully pray that the complaint be dismissed, with the costs, expenses, disbursements and attorneys' fees upon the plaintiffs, or should the court hold that the contract of purchase and sale is null and void, these defendants pray that the plaintiffs be adjudged to return to the defendants the sum of \$17,-600 with interest from the date of the said sale.

San Juan, for Ponce, April 25, 1917.

HERMINIO DIAZ,
R. RIVERA ZAYAS,
Attorneys for the aforesaid Defendants.

Verification.

Herminio Diaz Navarro, of age, married, attorney at law and resident of this city, being duly sworn, says: That he is the attorney for the defendants in whose names he appears in this suit; that he prepared the foregoing amended answer; that the facts therein alleged are true and certain of his own knowledge and that the said clients do not swear to these facts on account of their absence from this Judicial District and from the Judicial District of Ponce.

San Juan, April 25, 1917.

HERMINIO DIAZ,
Attorney for the aforesaid Defendants.

17 No. 3923. Sworn to and subscribed before me by Herminio Diaz Navarro, who possesses the aforesaid qualifications and whom I personally know, of all of which I certify.

San Juan, April 26, 1916.

JULIO CESAR GONZALEZ.

(Cancelled stamp.)

I, Herminio Diaz Navarro, of age, married, attorney at law and resident of San Juan, being duly sworn, say: That today and under cover bearing a special delivery stamp and with postage duly paid, I deposited in the San Juan Post Office, addressed to Jose A. Poventud, attorney for the plaintiffs in the above-entitled case, a copy of this amended answer, directed to his office in the city of Ponce, there being a regularly established daily mail service between that city and San Juan, all being the truth and nothing but the truth.

San Juan, P. R., April 26, 1917.

HERMINIO DIAZ,
One of the Attorneys for the said Defendants.

No. 3924. Sworn to and subscribed before me by Herminio Diaz Navarro who has the aforesaid qualifications, whom I personally know, as to all of which I certify.

San Juan, P. R., April 26, 1917.

JULIO CESAR GONZALEZ,
Notary Public.

(Cancelled Internal Revenue stamp.)

Filed April 27, 1917.

JOSE ROSARIO GELPI,
Clerk,

By A. GOTAY PURCELL,
Deputy Clerk.

Answer to the Reconvention.

In answer to the alleged reconvention of defendants Jose J. Benitez et al. pleaded in paragraph 14 of their amended answer in the above-entitled cause, the plaintiffs allege:

First. That the new matter of the so-called reconvention as stated in the fourth paragraph of the amended answer of defendants Jose J. Benitez et al. does not state facts sufficient to constitute a counterclaim against the plaintiffs.

Second. The plaintiffs have not sufficient information or
18 belief regarding the allegation made in the fourteenth paragraph of the said amended answer of defendants Jose J. Benitez et al., as constituting the alleged reconvention so as to be able to answer the same; therefore they specifically deny the said fourteenth paragraph of the said amended answer in all its parts.

Therefore, the said plaintiffs pray that the said reconvention of the defendants be dismissed, with such other relief as the court may deem proper.

JOSE A. AND ALBERTO S. POVENTUD,
Attorneys for the Plaintiffs.

Arturo Aponte, Jr., under oath says: That he is one of the plaintiffs in the above-entitled case as guardian ad litem of co-plaintiffs Carlota and Clementina Gonzalez Lugo; that he has read the foregoing answer and that the facts therein contained are true according to his information and belief.

ARTURO APONTE, JR., *Affiant.*

No. 1654. Sworn to and subscribed before me by Arturo Aponte, Jr., attorney at law, married, of age, a resident of Humacao, whom I personally know, this fifth day of May, 1917.

GUSTAVO RODRIGUEZ,

Notary Public.

Ponce, P. R.
(Stamp.)

Copy received.

DIAZ,
NAVARRO, AND
RIVERA ZAYAS.

Filed today, May 5, 1917.

JOSE ROSARIO GELPI, *Clerk.*

Motion for Substitution of Parties.

Now come Arcadia and Teodosia Benitez Sampayo, of age and co-defendant Jose J. Benitez Diaz, the latter in his own name and as father with patria potestas over his minor children Carlota, Josefa and Jose Benitez Sampayo, all by their undersigned attorney, and make the following motion:

That after the amended complaint of the plaintiffs had been filed and co-defendant Carlota Sampayo Guzman had been summoned, she died intestate, leaving as her sole and universal heirs and representatives defendant Jose J. Benitez Diaz, the surviving spouse, and her legitimate children born of her marriage with said Benitez, named Arcadia and Teodosia Benitez y Sampayo, of age, and Carlota, Josefa and Jose Benitez Sampayo, minors represented by their said father, Jose J. Benitez Diaz, this fact not having been mentioned, due to an involuntary omission in the last amended answer filed in the name of said Jose J. Benitez Diaz and his wife, the said Carlota Sampayo Guzman, the said answer having been admitted by the court by order of April 30, 1917, and these movers having already obtained the corresponding declaration of heirship in their favor as aforesaid.

Therefore, they pray the court to sustain this motion that the interested parties herein mentioned be regarded as substituted as defendants in place of said co-defendant Carlota Sampayo Guzman.

DIAZ NAVARRO AND
RIVERA ZAYAS.

I agree to the foregoing.

JOSE A. POVENTUD,

Attorney for the Plaintiffs.

Order.

The foregoing motion having been considered, it is sustained by the court in all its parts and in consequence thereof the court orders the substitution as co-defendants in this case in the place of Carlota Sampayo Guzman, deceased, of her representatives and sole and universal heirs Jose J. Benitez, surviving spouse, Arcadia and Teodosia Benitez Sampayo, of age, and Carlota, Josefa and Jose Benitez Sampayo, minors, the latter three represented by Jose J. Benitez Diaz, the case to be proceeded with against them as co-defendants by virtue of the substitution herein ordered.

D. SEPULVEDA.

Statement of the Case and Opinion.

The original complaint in this case was filed on September 8, 1913, and the lis pendens notice (Exhibit C of the plaintiff) was entered in the Registry of Property of Humacao on the margin of record 10, ninth and ninth, properties numbers 454 duplicate, 456 duplicate, and 453 duplicate, at folios 141, 242 and 24 of 20 volumes 13, 10 and 11 of the Municipality of Naguabo, respectively, under date of September 15 of the said year 1913.

After an indefinite series of motions to strike, demurrers and other interlocutory pleadings the complaint was several times amended, the final complaint being the one filed on January 26, 1916.

Defendant Diego Garcia duly answered the complaint by Francisco Gonzalez Fagundo, his attorney. The answer was also amended the final answer being the one filed on April 27, 1917, which contained a reconvention against the plaintiffs.

On motion of the plaintiffs default of co-defendants Clementina Lugo y Calzada, Maria and Manuela Gonzalez Lugo and Prudencio Eugui y Barriola was entered January 12, 1916. On January 25, 1916, the case was first called for trial after having been previously set on the docket, and after most of the evidence had been examined the parties stipulated that all such proceedings be considered null and void in order to comply with certain omitted requirements of the law, and the court having approved the said stipulation. Finally, on May 5, 1917, the case was brought to trial after previous setting on the docket, the plaintiffs appearing by attorney Jose A. Poventud, defendants Jose J. Benitez Diaz and his wife, Carlota Sampayo y Guzman, substituted by her heirs, by attorneys Herminio Diaz Navarro and Rafael Rivera Zayas, and defendant Diego Garcia Ortega by attorney Francisco Gonzalez Fagundo. Before going into the trial the defendants, with the consent of the plaintiffs, filed a motion for substitution of parties as to co-defendant Carlota Sampayo y Guzman, and on the said date the court sustained the motion for substitution: therefore the title of the case should be understood to be as given in said motion for substitution of parties.

The plaintiffs introduced oral and documentary evidence, defendant Diego Garcia Ortega introduced documentary evidence consisting of a certificate from the Registrar of Property of Humacao and the other opposing defendants introduced documentary evidence.

Before proceeding farther it should be stated that the plaintiffs offered in evidence deed No. 56, of extension of the inventory and partition of the estate of Manuel Gonzalez Fernandez, executed on

21 August 30, 1913 (Exhibit G of the plaintiffs), and also a supplement to the said deed containing the order of the District Court of Humacao of October 25, 1913, approving the distribution made in the said deed. The aforesaid deed No. 56 and its supplement (both marked "Exhibit G" of the plaintiffs) were not admitted by the court when they were offered, the court ruling as follows:

"The admission of the deed is denied because the court understands that it was executed after the cause of action in this case accrued. The evidence must relate to the time when the cause of action accrued and the court believes that the cause of action accrued when the sale was made with the approval of the District Court of San Juan."

Before the trial of the case was closed the plaintiffs made a motion that the court reconsider its ruling and admit in evidence the said deed and supplement (Exhibit G of the plaintiffs). The court then sustained its order, postponing its ruling on the motion for reconsideration until prior to the consideration of the merits of the case and allowing time to the attorneys for the parties for filing briefs on that point. In due time the attorneys filed briefs on the question. The court has considered them carefully and arrives at the conclusion that in order to secure a just disposition of the case and that all the rights of the parties may be well and properly determined, it should admit in evidence the said Exhibit G and its supplement and does hereby admit them to be considered together with the rest of the evidence. And an exception is hereby reserved to all the defendants appearing at the trial as if the exception had been taken by them at the trial.

The prayer of the complaint is as follows: That after due process of law judgment be rendered for the plaintiffs and against the defendants, holding: (1) That the authorization given by the District Court of San Juan, P. R., Section 1, on May 29, 1908, referred to in the fifth count, as well as the deed of purchase and sale of June 5, 1908, referred to in the fourth count of the complaint both in so far as the undivided interests of the three plaintiffs in the described properties are concerned, are absolutely null and void and of no legal value or effect, ordering the cancellation of the record of the said purchase and sale as to the said undivided interests of the said three plaintiffs. (2) That the said three plaintiffs are the owners in common
22 pro indiviso of three-sixths of an undivided half of the three properties, ordering the division of the community held by the plaintiffs in the said properties with defendant Jose J. Benitez Diaz and that the latter deliver to the former such portions

as may be shown to belong to them. (3) That the deeds of lease and mortgage referred to in the eighth and ninth counts of the complaint are null and void and of no legal value in so far as they concern or may affect the said rights of the three plaintiffs in the described properties, ordering the cancellation of the records of the said deeds as to the shares of said three plaintiffs in the said properties. (4) That said defendant Jose J. Benitez Diaz owes and should pay to the said plaintiffs the sum of eight thousand and five hundred dollars as the rents and profits of their said undivided interests and that the said defendant, together with the others who oppose this suit, be charged with the costs, disbursements and attorneys' fees, and that the court grants any other relief consistent with the facts of this complaint.

The following allegation is made in the answer filed by the defendants Jose J. Benitez Diaz and the heirs of his wife, Carlota Sampayo y Guzman:

"They further allege as a reconvention that the said sale of the undivided share of the minor plaintiffs was made on account of the urgent necessity in which they then were of paying contracted debts, among them costs and attorneys' fees in a suit brought by them to defend the properties in question, and we further allege that the sale was necessary and beneficial and that they profited by the purchase price, which was used for paying the said debts and to save their titles to these properties, because they thus avoided attachments and forced sales in suits for the said debts. Therefore, these defendants respectfully pray the court that the complaint be dismissed, with the costs, expenses, disbursements and attorneys' fees upon the plaintiffs; or in case the contract of sale should be adjudged null and void, then defendants pray that the plaintiffs be adjudged to return to the defendants the sum of \$17,600, with interest from the date of the said sale."

It appears from the evidence as a whole that the following facts have been satisfactorily proved:

That on August 17, 1904, Manuel Gonzalez y Fernandez made a will designating as his sole and universal heirs in equal shares his six children born of his marriage with Clementina Lugo Calzada, and named Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo, and his said wife in that portion which the law allows her, also declaring that all of his property was ganancial.

On August 19, 1904, Manuel Gonzales y Fernandez died. On May 29, 1908, Clementina Lugo y Calzada, widow of said deceased who was then living with her children in the city of San Juan, petitioned in the name of her then minor children to the District Court of San Juan and obtained authorization from the said court to sell the interests of the said minors in the said properties for reasons of necessity and utility duly shown.

On June 5, 1908, Clementina Lugo Calzada in her own right and in the names of her unemancipated minor children Manuel, Carlota, Clementina, Aristides Gonzalez Lugo and Maria and Manuela Gonzalez Lugo executed a deed before Notary Antonio de Aldrey by which

she sold to Jose J. Benitez Diaz, then married to Carlota Sampayo y Guzman, the entire three properties in litigation for the lump sum of \$17,600.

On June 12, 1908, the said heirs presented in the Registry of Property of Humacao a copy of the will of Manuel Gonzalez, a certificate of his death and a petition asking that the said three properties be recorded, as they were, in common pro indiviso and without specifying the share of each of the heirs, in the names of the widow Clementina Lugo Calzada and of the said children Maria, Clementina, Manuela, Aristides, Manuel and Carlota Gonzalez Lugo. On July 18, 1908, Jose J. Benitez Diaz recorded the said sale of the properties to him.

After becoming of age Aristides Gonzalez Lugo ratified the sale of his share to Jose J. Benitez Diaz.

On March 18, 1910, the property described under letter "b" was leased by Jose J. Benitez Diaz and his wife to Prudencio Eugui y Barriola for a period of ten years and the said lease was recorded in the Registry of Property.

On August 21, 1912, after the appointment of a guardian ad litem for the minors Manuel, Carlota and Clementina Gonzalez Lugo and of Manuel Tous Soto as partitioner the heirs of Manuel Gonzalez y Fernandez made a liquidation, division and partition of the estate of said Manuel Gonzalez y Fernandez.

24 Seven rural properties are mentioned in this deed of partition, to wit:

- (a) One called "Rivalta" of 150 cuerdas.
- (b) One called "Cercado Torres" of 121 cuerdas.
- (c) One called "Cercado Maldonado" of 35 cuerdas.
- (d) One called "Duplace" of 49 cuerdas.
- (e) Another of 265 cuerdas.
- (f) One called "Zarzal" of 100 cuerdas.
- (g) One of 1.75 cuerdas.

The three properties described in the complaint were not included in the said partition.

The widow was awarded in the said deed of partition, among other properties, the rural property called "Zarzal".

Each of the plaintiffs in this suit, Carlota, Clementina and Manuel, was awarded, among other properties, three shares in the "Duplace" property, three in the 265 cuerdas in the Ward of Mameyes and three in another urban property situated in the Ward of Mameyes.

This partition was approved by the District Court of Humacao and protocolled in the office of notary Manuel Tous Soto on August 24, 1912.

On June 7, 1913, Jose J. Benitez Diaz and his said wife created a voluntary mortgage on the said three properties in favor of Diego

Garcia y Ortega and the mortgage was recorded in the Registry of Property.

On October 3, 1913, Jose J. Benitez Diaz and his wife sold the property described in the complaint under letter (b) to Cristina Alvarez y Garriga, who is now the only owner and possessor of the property with her title recorded in the Registry of Property.

On September 2, 1914, Jose J. Benitez Diaz and his wife sold the property described in the complaint under letter (c) to Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Feurtes, who recorded the sale and are the actual owners and possessors of that property.

On September 2, 1914, the said Mr. Benitez and his wife sold the property described in the complaint under letter (a) to Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes Jr., who recorded the sale and are the actual owners of that property.

25 The following was also proved by Exhibit G and its supplement which, as said before, the court finally admitted in evidence:

That by deed No. 56 supplementary to the inventory and partition of the estate of Manuel Gonzalez Fernandez executed by the heirs on August 30, 1913, the said heirs distributed the three properties described in the complaint which were never included in the original deed of partition No. 61 executed on August 24, 1912, before notary Manuel Tous Soto in the city of Humacao regarding the protocolization of the partition of the said estate. These are the facts proved with respect to the complaint and the answer.

But considering specially the evidence adduced with reference to the reconvention of the defendants, it appears that the following facts have been satisfactorily shown:

That Clementina Lugo, widow of Gonzalez, petitioned the District Court of San Juan (Exhibit 4 of the defendants) for authorization to sell the shares belonging to her minor children Aristides (who subsequently ratified the sale made to Benitez), Manuel, Carlota, Clementina and Manuel Gonzalez Lugo, giving in her petition as reasons for the utility and necessity of the said minors, the following:

That the succession of Manuel Gonzalez owed attorney Pettingil for defending a suit in behalf of the succession, the sum of \$4,000; that the sum of \$2,000 more was necessary to carry out a certain agreement made in a suit against the said succession; that the sum of \$1,200 more was needed to pay attorney Antonsanti for his participation in the suit, and that the sum of \$1,866.64 should be paid to one Baralt of Fajardo in order to take up a note that was due, the total alleged to be owed being the sum of nine thousand, one hundred and forty-six dollars and sixty-four cents (\$9,146.64). It was further alleged in the said petition that only half of the property was leased, the rents not being sufficient for the necessities of the petitioner and her children and that she believed that by investing the surplus obtained from the sale in properties situated in San Juan they would yield an adequate rent for her immediate needs and those of her children as well as for their education. It also appears as proved that \$8,000 of the proceeds of the sale made to defendant

Benitez was used for the payment of various debts incurred by the succession.

26 It appears from Exhibit No. 5 of the defendants or the release deed of October 26, 1911, in connection with Exhibits Nos. 6, 7 and 8 of the said defendants, that defendant Jose J. Benitez paid for the benefit of the minors, and becoming himself responsible for certain lawful debts, the sum of \$8,000 from the proceeds of the sale of the three properties involved in this suit. So that it appears proved, in the opinion of the court, according to law and the jurisprudence hereinafter to be cited, that the minors who are now the plaintiffs profited by the purchase price of the said properties. Although it is true that the plaintiffs introduced oral evidence tending to show the profit obtained from the three properties involved in this suit, it is none the less true that the said evidence presented in accordance with the sixth allegation of the complaint, covers only the rents and profits of all kinds from the properties from the date of their purchase by defendant Jose J. Benitez (June 5, 1908) until the filing of the complaint, therefore, the court has no sure basis within this suit for estimating the rents and profits of the said properties from the date on which the defendants were summoned until the date of the complete restitution of the properties which, in the opinion of the court and as will hereinafter be discussed, is the only recovery recognizable in this suit.

Passing now to questions of law, to be decided in this case, we anticipate the following conclusions whose grounds we shall successively set forth:

First. The authorization granted by the District Court of San Juan, Section 1, on May 29, 1908, and the deed of purchase and sale of June 5, 1908, in so far as they relate to the joint interests of the three minor plaintiffs in the described properties, are null, inexistent, ineffectual and of no legal effect or value.

Second. The mortgage created on the properties in favor of defendant Diego Garcia Ortega and also the contract and deed of lease of March 18, 1910, involving the property described under letter (b) and with defendant Prudencio Eugui y Barriola should be adjudged null and void.

Third. By virtue of the entry of the *lis pendens* notice in the Registry of Property of Humacao on September 15, 1913, the conveyance of the property described under letter (a) to Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr., should be adjudged null and void; also the conveyance of the property described under letter (b) to Cristina Alvarez y Garriga and that of the property described under letter (c) to Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr., and their corresponding records in the Registry of Property.

Fourth. Defendants Jose J. Benitez and the heirs of his deceased wife, Carlota Sampaio y Guzman, should be regarded as possessors in good faith until the date in which they were summoned in this action.

Fifth. The minor plaintiffs profited, in the legal sense of this word, and should return the amount that each one of them received from the purchase price but without interest.

Sixth. There should be no special imposition of costs.

With respect to the first conclusion, or that referring to the nullity, inexistence and inefficacy of the authorization granted by the District Court of San Juan, First Section, on May 29, 1908, we cite in the first place section 229 of the Civil Code as amended by the act of the Legislative Assembly of Porto Rico of March 14, 1907, which reads as follows:

"The exercise of the patria potestas does not authorize the father or mother to alienate or burden real property which in any manner belongs to the child, and over which either of them have the administration, except after securing judicial authorization, which shall be accorded by the District Court of the Judicial District where said property is situated, upon proof being furnished as to the necessity or utility of such transfer or burden. The aforesaid judicial authorization shall not be required of the father or mother as the case may be, in order to receive the payment of an indebtedness due to the child, or to cancel any lien or mortgage securing the same."

Section 4 of the Civil Code reads as follows:

"Acts executed contrary to the provisions of law are void except when the law preserves their validity."

28 The nullity of the authorization is absolutely clear in view of the foregoing sections of the Civil Code, and it has been so held and established by the Supreme Courts of the United States and of Porto Rico, among other cases, in the following:

Martorell v. Ochoa, 23 P. R. R. 28.
 Bayron et al. v. Garcia et al., 11 P. R. R.
 Ex parte Le Hardy, 17 P. R. R. 985.
 Esteras v. Arroyo, 16 P. R. R. 689.
 Nazario v. The Registrar, 16 P. R. R. 635.
 Garzot v. Rubio, 209 U. S. 303.
 Oliver v. Oliver, 23 P. R. R. 168.
 Early v. Doe, 57 U. S. 617-618.
 Longpre v. Diaz, 237 U. S. 512; 59 L. Ed. 1080.
 Del Rosario v. Rucabado et al., 23 P. R. R. 438.

As to the second proposition, or that referring to the nullity of the mortgage created in favor of Diego Garcia Ortega and of the contract of lease of property (b) to Prudencio Engui y Barriola, the court finds that conclusion is supported by the following law and jurisprudence:

"Section 1758.—The following are essential requisites of the contracts of pledge and of mortgage: * * * 2. That the thing

pledged or mortgaged is owned by the person who pledges or mortgages it." Civil Code.

It clearly appears from the first conclusion established that defendants Jose J. Benitez Diaz and his wife had no rights in any of the properties that they could transfer by lease; therefore the lease of property (*b*) to the defendant whose default has been entered, Prudencio Eugui y Barriola, should be declared null and void. Furthermore, it is evident that regarding the contract of mortgage in favor of Garcia Ortega as well as the contract of lease in favor of Prudencio Eugui y Barriola, they can, under no concept, successfully allege or maintain that they are third persons, for the notice that they had of the facts, either personally or from the registry, is sufficient, inasmuch as no one can plead ignorance of the law. (*Ochoa v. Hernandez*, U. S. 57 L. Ed. 1427.)

"No one shall be considered as a third person in Porto Rico if the rights claimed were known to him or if such rights appear from the Registry of Property, it being unnecessary in the last case that he has a personal knowledge of the facts." (*Blanco v. Hernandez*, 29 18 P. R. R. 687; *People v. Dimas*, 18 P. R. R. 1019; *Hernandez v. Rosado*, 20 P. R. R. 163; *Carmona v. Cuesta*, 18 P. R. R. 178, and *Suri v. Quinones*, 17 P. R. R. 614.

As to the third conclusion, or as to the effects that the record of the *lis pendens* notice may produce in this suit, we find the following: According to the foregoing, the notice of the pendency of the action was entered in the Registry of Property of Humacao on September 15, 1913. It also has been shown that the properties marked in the complaint with the letters "*a*," "*b*" and "*c*," were conveyed to the persons already mentioned in sales made by defendants Jose J. Benitez and his wife, and that the said sales were recorded in the Registry of Property subsequent to the entry of the *lis pendens* notice. And this being the case, it clearly appears, according to Section 91 of the Code of Civil Procedure, that a purchaser of any right in real property when notice of the pendency of an action affecting the property is recorded in the registry, shall be bound by the result of the action without the necessity of being made a party to the said action.

"If any defendant against whom the judgment was rendered was in possession at the time of the commencement of the action, any party who took possession after the entry of the *lis pendens* notice, or with positive knowledge of the pendency of the action, would be bound by the judgment and could be dispossessed by execution of the judgment as if he were a party in the judgment." (*Fogarty v. Sparks*, 22 Cal. 142-149; *Gregory v. Haynes*, 13 Cal. 591-594; *Haynes v. Calderwood*, 23 Cal. 409-410; *Curtis v. Sutter*, 15 Cal. 260-264; *Welton v. Cook*, 61 Cal. 481-487; *Sampson v. Ohleyer*, 22 Cal. 200-207; *Ferreira v. Chabot*, 63 Cal. 564-568.)

Section 290 of the Code of Civil Procedure.

In the jurisprudence of the Supreme Court of Porto Rico we find the following:

"Where a *lis pendens* notice of an action claiming the title to a property has been entered in the registry of property subsequent purchasers of the property cannot allege that they had no knowledge of the suit and must abide by the result of the suit." (Jordan v. Gomez, 18 P. R. R. 149.)

30 "The title of a person acquiring a property *pendente lite* after notice of the pendency of the action or attachment upon the property has been entered may be cancelled by an order of the court entered in the same suit." (Gonzalez v. The Registrar, 23 P. R. R. 750.)

The fourth conclusion arrived at by the court in this case is, in its opinion, the most important and has required the most careful consideration. It is that defendants Jose J. Benitez Diaz and the heirs of his deceased wife, Carlota Sampayo y Guzman, should be considered as possessors in good faith until they were summoned in this action. The court is not aware of, nor does it ignore, the jurisprudence laid down by the Supreme Court of the United States in the case of Longpre v. Diaz, 237 U. S. 512. Nor does the court ignore the jurisprudence laid down by the Supreme Court of Porto Rico in many cases wherein it is defined what is a possessor in bad faith. But in the opinion of the judge of this District Court the present case is exceptional.

In order so to classify it, we must necessarily, in accordance with the facts proved in the case and with judicial notice of the laws and jurisprudence of Porto Rico, make a brief study of the modifications made in the laws governing the alienation of property belonging to minors and of the jurisprudence laid down by the Supreme Court of Porto Rico in *ex parte* proceedings. We should begin by recalling that it is an established fact in this suit that the petition for authorization to sell the property of the minors (Exhibit No. 4 of the defendants) was presented to the District Court of San Juan on May 27 1908, and was granted on the 29th of the said month and year, and that by virtue of said authorization the three properties in litigation were sold to Jose J. Benitez Diaz and his wife by a deed of June 5, 1908.

Let us quote, before proceeding farther, what Manresa says in commenting on Section 2 of the Spanish Civil Code:

"However, one thing is the real, manifest and truly inexcusable ignorance to which undoubtedly Section 2 refers and another and distinct thing is the possible and excusable error arising from complicated statutes and from different interpretations of doctrines." (1 Manresa, Commentaries on the Civil Code, p. 102, par. 3.)

31 "One thing is to ignore the laws and another and distinct thing is to ignore the legal solutions arising from their application, and a case that must be considered which is generally of a complex nature is to determine any solution of invalidity of a juridical act which requires a perfect knowledge of all elements and functions of legal tecnicisms." (Page 103, par. 2d, of volume cited.)

"This reasoning requires a distinction, without establishing an absolute rule, with which the precept of section 2 is upheld, giving section 433 all possible scope. Ignorance of the law cannot serve as a basis for good faith; but error in its application does." (Par. 2d, p. 103, of volume cited.)

"Bad faith for the purpose of validity of possession, as held by the judgment of April 24, 1880, does not arise from the nullity of the title, but from the facts which contribute to knowledge of it." (Par. 2d, p. 104, of volume cited.)

Therefore, in order to decide whether or not these defendants held in bad faith we do not have to consider the nullity of the title, but the reasons they had for knowing whether or not the title was void. This is the real question in the case. Let us consider article 164 of the Spanish Code of 1889, which reads as follows:

"The father or the mother, as the case may be, cannot alienate nor encumber the real property of the child which he or she may control as usufructuary or administrator, except for established reasons of utility or necessity and by the authorization of the judge of the domicile after hearing the Department of Justice, saving the provisions of the Mortgage Law with regard to the effects of the transmission."

And we quote the following from the commentaries of Manresa on the said article:

"As regards our Code there can be no doubt that for the alienation or encumbrance of real estate the authorization of the court is indispensable. The code requires that such authorization should be obtained from the judge of the domicile, but as jurisdiction is a matter falling under the adjective law and the final provision of the code only repeals the common civil law, we think that paragraph 23 of article 63 of the Law of Civil Procedure, which provides that authorization for the sale of property of minors or incapacitated persons shall be given by the judge of the place where the property may be situated, or of the domicile of the persons to whom it belongs, continues in force and is complimentary to this article. However, to avoid any question it will be most prudent to apply to the judge of the domicile. The procedure to be observed is that established in Title 11, first part of Book III of the Law of Civil Procedure."

32 Section 229 of the Revised Civil Code, which went into effect in 1902, contained a similar provision to that of article 164 of the Spanish Civil Code, that is, that in this kind of authorization for the alienation of property belonging to minors, the judge of the domicile had jurisdiction. The Law of Special Legal Proceedings was adopted by the Legislative Assembly of Porto Rico on March 9, 1905. Section 19 of the said law of special legal proceedings reads as follows:

"In cases of interstate succession, or of the nullity of a will, those who may have an interest in the inheritance may petition the district court of the last domicile of the decedent, or of the place where his property is situated, for the issuance of the corresponding order of heir's declaration."

On March 25, 1905, the Supreme Court of Porto Rico held that in ex parte proceedings (referring to a declaration of heirs) the court having jurisdiction is the one to which the parties submit themselves expressly or impliedly, provided that it has jurisdiction in matters of the same nature and in the same instance. (*Sola v. The Registrar of Property*, 8 P. R. R. 205.) In that case the District Court of Humacao had jurisdiction, according to the Law of Special Legal Proceedings, and the petition for the declaration of heirs was presented to the District of Guayama. On July 15, 1908, the District Court of Guayama approved a declaration of heirs notwithstanding the fact that the District Court of Humacao was the court having jurisdiction of the matter in accordance with said section 19 of the Law of Special Legal Proceedings. The Registrar of Property of Caguas refused to record the said declaration of heirs and an appeal was taken from his decision to the Supreme Court of Porto Rico which, by its judgment of November 18, 1908, ratified its former doctrine to the effect that in this kind of ex parte proceedings the express submission of the parties gave jurisdiction. The case mentioned is that of *Santos v. The Registrar of Property of Caguas*, 14 P. R. R. 741.

It should not be forgotten that on March 14, 1907, the Legislature of Porto Rico amended section 229 of the Revised Civil Code, the amendment consisting mainly in designating as the jurisdictional court for granting authorization for the alienation or encumbrance of real estate belonging to minors the District Court of the
 33 Judicial District wherein the property is situated. It should not be overlooked that the judgment of the Supreme Court of Porto Rico in the case of *Santos v. The Registrar*, *supra*, was rendered on November 18, 1908, or several months after defendants Benítez and his wife had acquired the properties involved in this suit.

In the year 1910 the Supreme Court of Porto Rico for the first time laid down a different doctrine in the case of *Esteras et al. v. Arroyo*, 16 P. R. R. 691. On November 10, 1910, the Supreme Court said in that case:

"The judgment of the District Court of Ponce is a nullity, because Esteras Rivera did not die in that jurisdiction and left no property. The court was without jurisdiction to name the defendant heir of his father. (Sees. 19 and 23 of the Law of Special Legal Proceedings; Sess. Acts of 1905, pp. 141 and 143.) An application to be declared universal heir is not an adversary proceeding and the party who brings it cannot choose his form."

After this brief review it should be considered whether defendants Benítez and his wife had reasons for knowing that the authori-

zation granted by the District Court of San Juan was void. It is easy to understand that the defendants could not have arrived at any other conclusion than that the authorization granted by the San Juan court in this case was valid. If Benitez and his wife had been able to study the jurisprudence of the Supreme Court of Porto Rico in the case of *Sola v. The Registrar*, supra, and the commentaries of Manresa on article 164 of the Spanish Civil Code, volume 2, pp. 44-45, they necessarily would have arrived at the conclusion that the said authorization was valid. The most competent lawyer in Porto Rico would also have arrived at the same conclusion. If defendant Benitez and his wife had been able to study for themselves the jurisprudence laid down by the Supreme Court of Porto Rico in the judgment of November 18, 1908, or five months after they had acquired the properties involved in this suit (*Santos v. The Registrar*, supra) they would have concluded also that the authorization granted by the District Court of San Juan was perfectly valid. Undoubtedly no other conclusion would have been reached by the most expert lawyer in Porto Rico after studying the case, if he had been consulted by the defendants.

34 In these circumstances and such being the case, the court cannot come to any other just conclusion than that defendants Jose J. Benitez Diaz and his wife, now her heirs, held the properties in good faith until the date of the filing of the complaint. From that time we must be governed by the provision of section 366 of the Civil Code, which is as follows:

"He is bona fide possessor who possesses as owner by virtue of a title sufficient in its terms and conditions to transfer the ownership, and the defects of which he is ignorant of. Bona fide possession ceases from the moment the possessor becomes acquainted with the defects of the title, or through a suit instituted by the owner of the thing to recover the same."

Referring now to the fifth conclusion previously laid down in this opinion, that is, the obligation of the minor plaintiffs, on account of having profited, each to return the part of the purchase price received by him, the following appears: Defendants Jose J. Benitez and his wife, in the 14th paragraph of their answer to the complaint, set up a counter-claim in the manner stated at the beginning of this opinion. In the prayer of their counter-claim the defendants asked that the plaintiffs be adjudged to return to them the sum of seventeen thousand six hundred dollars (\$17,600), with interest from the date of the alleged void sale.

We think that the sum of seventeen thousand six hundred dollars (\$17,600) prayed in the counter-claim is erroneous for the following reasons: According to the deed of June 5, 1908 (Exhibit B of the complainants), the three properties involved in this suit belonged in equal parts to Clementina Lugo Calzada, the mother of the minors, and to her six children, among whom were three minors who are the plaintiffs here, each one of them owning a sixth part of half of the properties. The three minors owned three-sixths of half of the property, or a half of the half of the property, or, in short,

one-fourth of the three properties. According to the first paragraph of the said deed (Exhibit B of Complainants), the total of the three properties involved in this suit was sold to defendants Jose J. Benitez Diaz and his wife for the lump sum of \$17,600. A simple arithmetical calculation shows that of the said price of 35 the three properties the minor plaintiffs were entitled to only the sum of \$4,400. This amount is that which must serve as a basis for the restitution and was the maximum amount which the defendants could claim in their counter-claim.

Before proceeding further we will cite the Commentaries of Manresa on section 1304 of the Spanish Civil Code, equivalent to section 127f of the Revised Civil Code, in order to determine the real meaning of profiting:

"Profiting—In What It Consists.—Having explained the circumstances that in our opinion call for the application of this article 1304, it only remains to indicate in what consists the profiting which determines the measure for restitution. It does not suppose, as might be thought, a material and lasting increase of fortune, but a beneficial and prudent investment for the incapacitated person of that which he received as determined by his necessities, position and duties towards other persons, and this is of sufficient importance, especially in relative incapacities, as that of a married woman and even minors about to become of age, and for such incapacities established with relation to other persons and other interests and rights it is not sufficient that the contract affords commodity, luxury or recreation to the incapacitated.

"From the above definition of profiting it is inferred that there is profit, even without any increase in fortune when what is obtained is applied to real necessities, such as food, clothing, room, health, etc., according to the said circumstances of the incapacitated."

We think that the defendants have proved the profiting on the part of the minor plaintiffs to the satisfaction of the court. As has been said in the course of this opinion, they presented in support of their counter-claim Exhibits Nos. 3, 4, 5, 6, 7 and 8. Exhibits 5 and 8 show that from the purchase price there was paid for the benefit of the minors and in payment of lawful debts the sum of \$8,000. That the remainder of the purchase price was beneficially and prudently used for the minors and was applied to proved necessities, such as clothing, shelter, health, etc., is proved by Exhibit 4 of the defendant, or the motion for authorization of the court for the sale of property, made to the District Court of San Juan and sworn to by the mother of said minors, Clementina Lugo, widow of Gonzalez. That motion recites specifically the reasons for the necessity and utility, as well as the use to be made of the proceeds 36 of the sale of the properties by the petitioner for the benefit of her children. In Exhibit No. 3 of the defendants, which is the same as Exhibit A of the plaintiffs, or the order of the District Court of San Juan granting the authorization, the condition is imposed that from the total proceeds of the sale "the debts referred to

in the petition shall be paid and the remainder belonging to the minors be invested in urban property for the benefit of the minors". This evidence in support of the counter-claim was in no way rebutted by the plaintiffs. So that, in accordance with the terms of said authorization and presumption No. 32 of Section 102 of the Law of Evidence, the court arrives at the most satisfactory conclusion that the minors profited by the part of the purchase price of the three properties which they received.

Having reached the conclusion that in this case mutual restitutions should be made and considering that it is not a case for the restitution of fruits, except from the date on which the defendants were summoned, we think that in justice the minors have no obligation to pay interest on the purchase price.

As to the sixth conclusion arrived at, we base it only on the special circumstances of this case. They clearly show that each party should pay his own costs in the suit.

In view of all the foregoing, the court is of the opinion that judgment should be rendered sustaining the complaint in part and also sustaining in part the counter-claim of defendants Jose J. Benitez Diaz and his wife, now the successors of the latter, as formerly set out in this opinion, and it is therefore adjudged:

First. That the authorization of the District Court of San Juan, P. R., granted on May 29, 1908, and to which count five of the complaint refers, as well as the deed of purchase and sale No. 68, executed by Manuela and Maria Gonzalez Lugo and Clementina Lugo Calzada in her own right and in representation of her minor children Aristides, Manuel, Carlota and Clementina Gonzalez, in favor of Jose J. Bonitez on June 5, 1908, in the city of San Juan, Porto Rico, before notary Antonio de Aldrey y Montolio, both (the authorization and deed mentioned) with respect to the undivided three-sixths belonging to the minor plaintiffs Manuel, Carlota and Clementina Gonzalez Lugo in the three properties hereinafter described, are absolutely null, inexistent, ineffectual and void of legal effect, as well as the transfers of said properties to Manuel Rodriguez Gonzalez, Jose Rodriguez Fuertes, Faustino R. Fuertes, Jr. (property letter *a*), to Cristina Alvarez y Garriga (property letter *b*) and to Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr. (property letter *c*); and it is hereby ordered that each and every entry by reason of the transfers of said properties "*a*", "*b*" and "*c*" be cancelled in the Registry of Property of Humacao from and including that which was made in deed No. 68 of June 5, 1908, before notary Antonio Aldrey y Montolio, of San Juan.

Second. It is adjudged that in so far as they effect the rights in the said described properties of the three minor plaintiffs the deeds of lease and mortgage to which counts eight and nine of the complaint refer, or the deed of lease of March 18, 1910, executed before notary Antonio de Aldrey by defendants Jose J. Benitez Diaz and his wife, Carlota Sampayo y Guzman, in favor of co-defendant Prudencio Eugui y Barriola, regarding the property described under letter "*b*"

in the complaint which is recorded in the Registry of Property of Humacao, are null and void, as is also the deed of June 7, 1913, executed before notary Francisco Gonzalez Fagundo of Humacao, creating a voluntary mortgage on the three properties referred to in this suit; the mortgage created in favor of defendant Diego Garcia for the sum of \$15,000, also recorded in the Registry of Property of Humacao; and it is ordered that the records of the said properties, in so far as they relate to the shares of the three minor plaintiffs in the real estate referred to in said deed, be cancelled.

Third. It is adjudged that the minor plaintiffs, Manuel, Carlota and Clementina Gonzalez y Lugo, are the owners in common and pro indiviso of three-sixths of an undivided half of each of the three properties involved in this suit and to be hereafter described; wherefore, it is ordered that a division be made of the community held by the plaintiffs and defendants Jose J. Benitez and his wife, Carlota Sampayo y Guzman, now her succession, of the said three properties; and it is further ordered that the latter deliver to the former such portion as may belong to them.

38 Fourth. It is adjudged that defendant Jose J. Benitez Diaz was a possessor in good faith of the three properties involved in this suit from the 5th of June, 1908, when he acquired the said properties by purchase, until the date when the said defendant was summoned in this suit; and it is ordered that, jointly and severally, said defendant Jose J. Benitez Diaz and the succession of his wife, Carlota Sampayo y Guzman, and each and every person to whom the properties involved in this suit may have been conveyed, restore to the plaintiffs the amount of the products of the said properties from the 15th of September, 1913, when the *lis pendens* notice was entered in the registry in this case, until the same have been entirely restored to the minor plaintiffs; and the total amount of said products will be duly fixed in the execution of the judgment, or in a separate action, the court having no definite basis within this suit for estimating the same due to lack of evidence, all rights of the parties being reserved.

Fifth. The counter-claim of defendants Jose J. Benitez Diaz and his wife Carlota Sampayo y Guzman, now her succession, is sustained in part and, consequently, it is adjudged that plaintiffs Carlota, Clementina and Manuel Gonzalez Lugo pay, without interest, to defendants Jose J. Benitez Diaz and his wife, Carlota Sampayo y Guzman, now her succession, the sum of \$1,466.66 each, or the part of the purchase price of the said properties received by each of the said plaintiffs; all without special imposition of costs, disbursements and attorney's fee.

The three properties involved in this suit are described as follows:

(a) Rural Property—A farm called "Los Puentes" situated in a place of the same name in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 36,223 cuerdas, equivalent to 14 hectares and 23 ares, of mostly valley land, crossed by a road, bounded on the north by lands of Juan Buso and the Blanco river,

which separates it from the land of Cereado Ramirez, now of Garzot and Fuertes; on the east by said Blanco river, the land of said Cereado Ramirez and the lands of Francisco Buso, at right angles with the river Anton Ruiz; on the south by land of Francisco Buso, at right angles with the river Anton Ruiz, and on the west by lands of Juan Buso, at right angles with said river Anton Ruiz.

(b) A property known as "Islote Quinones" situated in the Ward of Rio Abajo of the municipality of Naguabo, composed of 39 88.95 cuerdas, equivalent to 34 hectares and 23 ares, bounded on the north by the Viejo river, which separates it from the land of Maldonado now of Palmer, and from lands of Torres, now of Petronila Patricia Rios; on the east by lands of Carmen Fuentes; on the south by the river Blanco of Naguabo, which separates it from lands of the succession of Jose Rios y Berrios, and on the west by the said river, the "Mulas" plantation and the Torres property.

(c) A farm called "Madama Duran" situated in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 107.468 cuerdas, equivalent to 42 hectares and 24 ares, of low and mountain land, bounded on the north by the Blanco river, which separates it from the Ramirez property, now the property of Garzot and Fuertes, and, in part, of lands of the succession of Ramon Argueso; on the east partly by the said Blanco river, which separates it from the Ramirez property and part of the lands of Juan Buso; on the south by lands of Juan Buso, and on the west by lands of the succession of Ramon Argueso.

Let a judgment be entered accordingly and in due time let the proper writs be issued to the District Marshal and the Registrar of Property of Humacao for the execution of this judgment.

Ponce, P. R., January 30, 1918.

D. SEPULVEDA,

District Judge.

Judgment.

In view of the proceedings had in this case and after considering the evidence introduced by the parties as well as the jurisprudence applicable to each of the issues in this case, and in view also of the court's own opinion which is made a part of the record, the court renders the following judgment: The complaint and the counterclaim of defendants Jose J. Benitez Diaz and his wife, Carlota Sampayo y Guzman, now her succession composed of Jose J. Benitez Diaz in his own right and as father with patria potestas over his minor children Carlota, Josefa and Jose Benitez Sampayo y Arcadia and Teodosia Benitez Sampayo are each sustained in part and, therefore, it is adjudged as follows:

40 "First. That the authorization of the District Court of San Juan, P. R., granted on May 29, 1908, and to which count five of the complaint refers, as well as the deed of purchase and sale No. 68, executed by Manuela and Maria Gonzalez Lugo and Clementina Lugo Calzada in her own right and in representation

of her minor children Aristides, Manuel, Carlota and Clementina Gonzalez, in favor of Jose J. Benitez on June 5, 1908, in the city of San Juan, Porto Rico, before notary Antonio de Aldrey Montolio, both (the authorization and deed mentioned) with respect to the undivided three-sixths belonging to the minor plaintiffs Manuel, Carlota and Clementina Gonzalez Lugo in the three properties hereinafter described, are absolutely null, inexistant, ineffectual and void of legal effect, as well as the transfers of said properties to Manuel Rodriguez Gonzalez, Jose Rodriguez Fuertes, Faustino R. Fuertes, Jr. (property letter 'a'), to Cristina Alvarez y Garriga (property letter 'b') and to Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Feurtes, Jr. (property letter 'c'); and it is hereby ordered that each and every entry by reason of the transfers of said properties 'a', 'b' and 'c', be cancelled in the Registry of Property of Humacao from and including that which was made in deed No. 68 of June 5, 1908, before notary Antonio Aldrey y Montolio, of San Juan.

"Second. It is adjudged that in so far as they affect the rights in the said described properties of the three minor plaintiffs the deed of lease and mortgage to which counts eight and nine of the complaint refer, or the deed of lease of March 18, 1910, executed before notary Antonio de Aldrey by defendants Jose J. Benitez Diaz and his wife, Carlota Sampayo y Guzman, in favor of co-defendant Prudencio Eugui y Barriola, regarding the property described under letter 'b' in the complaint which is recorded in the Registry of Property of Humacao, are null and void, as is also the deed of June 7, 1913, executed before notary Francisco Gonzalez Fagundo of Humacao, creating a voluntary mortgage on the three properties referred to in this suit; the mortgage created in favor of defendant Diego Garcia for the sum of \$15,000, also recorded in the Registry of Property of Humacao; and it is ordered that the records of the said properties, in so far as they relate to the shares of the three minor plaintiffs in the real estate referred to in said deed, be cancelled.

"Third. It is adjudged that the minor plaintiffs, Manuel, Carlota and Clementina Gonzalez y Lugo, are the owners in common and pro indiviso of three-sixths of an undivided half of each of the three properties involved in this suit and to be hereafter described; 41 wherefore, it is ordered that a division be made of the community held by the plaintiffs and defendants Jose J. Benitez and his wife, Carlota Sampayo y Guzman, now her succession, of the said three properties; and it is further ordered that the latter deliver to the former such portion as may belong to them.

"Fourth. It is adjudged that defendants Jose J. Benitez Diaz was a possessor in good faith of three properties involved in this suit from the 5th of June, 1908, when he acquired the said properties by purchase, until the date when the said defendant was summoned in this suit; and it is ordered that, jointly and severally, said defendant Jose J. Benitez Diaz and the succession of his wife, Carlota Sampayo y. Guzman, and each and every person to whom the properties

involved in this suit may have been conveyed, restore to the plaintiffs the amount of the products of the said properties from the 15th of September, 1913, when the lis pendens notice was entered in the Registry in this case, until the same have been entirely restored to the minor plaintiffs; and the total amount of said products will be duly fixed in the execution of the judgment, or in a separate action, the court having no definite basis within this suit for estimating the same due to lack of evidence, all rights of the parties being reserved.

"Fifth. The counter-claim of defendants Jose J. Benitez Diaz and his wife Carlota Sampayo y Guzman, now her succession, is sustained in part and, consequently, it is adjudged that plaintiffs Carlota, Clementina and Manuel Gonzalez Lugo pay, without interest, to defendants Jose J. Benitez Diaz and his wife, Carlota Sampayo y Guzman, now her succession, the sum of \$1,466.66 each, or the part of the purchase price of the said properties received by each of the said plaintiffs; all without special imposition of costs, disbursements and attorney's fee."

Let the proper writs be issued to the District Marshal and the Registrar of Property of Humacao for the execution of this judgment. And the three properties involved in this suit are described as follows:

(a) Rural Property.—A farm called "Los Puentes" situated in a place of the same name in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 36.223 cuerdas, equivalent to 14 hectares and 23 ares, of mostly valley land, crossed by a road, bounded on the north by lands of Juan Buso and the Blanco river,

which separates it from the land of Cercado Ramirez, now of 42 Garzot and Fuertes; on the east by said Blanco river, the land of said Cercado Ramirez and the lands of Francisco Buso, at right angles with the river Anton Ruiz; on the south by land of Francisco Buso, at right angles with the river Anton Ruiz, and on the west by lands of Juan Buso, at right angles with said river Anton Ruiz.

(b) A property known as "Islote Quinones" situated in the Ward of Rio Abajo of the municipality of Naguabo, composed of 88.95 cuerdas, equivalent to 34 hectares and 23 ares, bounded on the north by the Viejo river, which separates it from the land of Maldonado now of Palmer, and from lands of Torres, now of Petronila Patricia Rios; on the east by lands of Carmen Fuertes; on the south by the river Blanco of Naguabo, which separates it from lands of the succession of Jose Rios y Berrios, and on the west by the said river, the "Mulas" plantation and the Torres property.

(c) A farm called "Madama Duran" situated in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 107.468 cuerdas, equivalent to 42 hectares and 24 ares, of low and mountain land, bounded on the north by the Blanco river, which separates it from the Ramirez property, now the property of Garzot and

Fuertes, and, in part, of lands of the succession of Ramon Argueso; on the east partly by the said Blanco river, which separates it from the Ramirez property and part of the lands of Juan Buso; on the south by lands of Juan Buso, and on the west by lands of the succession of Ramon Argueso.

Judgment rendered in Ponce, P. R., this thirtieth day of January, 1918.

D. SEPULVEDA,
District Judge.

Entered on the same day, month and year.

Attest:

D. SEPULVEDA,
District Judge.
JOSE ROSARIO GELPI,
Clerk of the District Court of Ponce,
By JOSE LLORENS ECHEVARRIA,
Deputy Clerk.

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Notice of Judgment.

To Attorneys Jose Angel and Alberto S. Poventud, Rafael R. Rivera Zayas, Francisco Gonzalez Fagundo, Prudencio Eugui y Barriola, Respectively in Ponce, San Juaun, Humacao and Gurabo, P. R., and Clementina Lugo y Calzada and Maria and Manuela Gonzalez Lugo, Naguabo, P. R.:

The undersigned clerk hereby notifies you that the District Court rendered judgment in this case on January 30, 1918, which was duly entered in the proper docket, as appears in the record of this case, from which you may fully acquaint yourself with the terms of the said judgment.

And in view of the fact that you are the losing party, or the attorney for such party, and therefore, can appeal, I give you this written notice and file a copy thereof in accordance with section 2 of the Act to amend sections 92, 123, 227 and 229 of the Code of Civil Procedure, approved March 9, 1911.

Ponce, P. R., February 4, 1918.

JOSE ROSARIO GELPI,
Clerk of the District Court.

I hereby certify that copies of this notice were sent by me today to attorneys Poventud, Rivera Zayas, Gonzalez Fagundo, and to Prudencio Eugui Barriola.

Ponce, P. R., February 4, 1918.

JOSE ROSARIO GELPI,
Clerk of the District Court of Ponce, P. R.,
By JOSE LLORENS ECHEVARRIA.

Communicated to Clementina Lugo y Calzada, Maria and Manuela Gonzalez y Lugo at Naguabo, P. R.

Motion for Substitution of Attorney.

Now comes defendant Jose J. Benitez Diaz, in his own right and as father with patria potestas over his minor unemancipated children Carlota and Jose Benitez Sampayo, Josefa, Arcadia and Teodosia Benitez Sampayo, by his attorney, Francisco Gonzalez Fagundo, and says: That until now the defendants have been represented in this suit by attorneys Herminio Diaz Navarro and Rafael Rivera 44 Zayas, who are no longer practicing their profession, the former because of impaired health and the latter because of his appointment as assistant attorney of the District Court of San Juan. That they have substituted attorney Francisco Gonzalez Fagundo to represent them in this action and hereby so notify the court and move that Francisco Gonzalez Fagundo be considered as their attorney for all the purposes of this suit.

Humacao for Ponce, February 19, 1918.

FRANCISCO GONZALEZ FAGUNDO,

Attorney for the Defendants.

ISLAND OF PORTO RICO,

District of Humacao, ss:

Luis E. Sanchez having been duly sworn states: That he is a resident of Humacao, of age and has no interest in this suit, and that attorney Francisco Gonzalez Fagundo is also a resident of Humacao; that there is a regular daily mail service between Ponce and Humacao; that on February 19, 1918, he deposited in the post-office of this city an envelope containing a true copy of the foregoing motion for substitution of attorney addressed to attorney Jose A. Poventud at his office and residence in Ponce, P. R., he being the attorney for the plaintiffs in this suit; that the postage was duly prepaid.

LUIS E. SANCHEZ.

Humacao, P. R., February 19, 1918.

No. 203. Sworn to and signed before me by Luis E. Sanchez, a resident of Humacao, of age, unmarried, an employee, whom I personally know.

Humacao, P. R., February 19, 1918.

FERNANDO VAZQUEZ,

Notary Public.

(There is a stamp.)

Order.

Motion sustained.

Ponce, P. R., February 21, 1918.

D. SEPULVEDA,

District Judge.

Appeal.

To Jose A. and Alberto S. Poventud, Attorneys of Record for Plaintiffs Carlota and Clementina Gonzalez Lugo, represented by their guardian ad litem, Arturo Aponte, Jr., and to Manuel Gonzalez Lugo, Clementina Lugo y Calzada, and Maria and Manuela Gonzalez Lugo, Defendants; Prudencio Eugui Barriola, Defendant; Aristides Gonzalez Lugo, Defendant, and the Secretary of the District Court for the Judicial District of Ponce, P. R.:

You are hereby notified that the above-named defendants, Jose J. Benitez Diaz, in his own right and as father with patria potestas over his minor unemancipated children Carlota and Jose Benitez Sampayo, Josefa, Arcadia and Teodosia Benitez Sampayo and Diego Garcia Ortega, appeal to the Supreme Court of Porto Rico from the judgment rendered and entered in this case by this court on January 30, 1918, and communicated on February 4 of said year.

Humacao for Ponce, February 25, 1918.

FRANCO. GONZALEZ,

Attorney for the Defendant-Appellants.

Filed February 28, 1918.

FELIPE COLON,

Clerk,

By A. GOTAY PURCELL,

Deputy Clerk.

Affidavit.

ISLAND OF PORTO RICO,

District of Humacao, ss:

Luis E. Sanchez, having been duly sworn, deposes: That he is a resident of Humacao, P. R., over 18 years of age, and has no interest in this suit; that attorney Francisco Gonzalez Fagundo is also a resident of Humacao; that between Ponce and Humacao there is a regular daily mail service; that yesterday, February 25, 1918, he served the notice of appeal to the Supreme Court of Porto Rico in this case on Prudencio Eugui in Humacao, P. R.; on Manuela Gonzalez Lugo at her residence in Rio Piedras; on Maria Gonzalez Lugo at her residence in San Juan, No. 56 Sol street; on Aristides

46 Gonzalez Lugo at his residence in Dorado, ward of Mameyales, and on Clementina Lugo Calzada at her residence in Fajardo, No. 12 Pino street, by delivering to each of them a copy of said notice of appeal; that likewise and on the said 26th day of February, 1918, he deposited in the post-office of Humacao an envelope containing a true and exact copy of said notice of appeal addressed to attorneys Jose A. and Alberto S. Poventud at their residence and office in Ponce, P. R., they being the attorney for the

plaintiffs; that he also sent by registered mail addressed to the clerk of the District Court of Ponce the original of the said notice of appeal to be filed; that the postage was duly prepaid.

Humacao, P. R., February 26, 1918.

LUIS E. SANCHEZ.

Affidavit No. 1358.

Sworn to and subscribed before me by Luis E. Sanchez, a resident of Humacao, of age, unmarried, employee, whom I personally know. Humacao, P. R., February 26, 1918.

CARLOS TRAVECIER,

Notary Public.

(There is a stamp.)

Filed February 28, 1918.

FELIPE COLON,
Clerk.

By A. GOTAY PURCELL,
Deputy Clerk.

Plaintiff's Appeal.

To the Clerk of the District Court; to co-defendants Prudencio Eugui y Barriola, Clementina Lugo Calzada, Maria, Manuela, and Aristides Gonzalez Lugo, each for himself, and to Francisco Gonzalez Fagundo, Attorney for Diego Garcia y Ortega and Jose J. Benitez, the latter for himself and as father with patria potestas over his minor children, Carlota, Josefa, Arcadia, and Teodosia Benitez Sampayo, who compose the Succession of Carlota Sampayo y Guzman:

You are hereby notified that the plaintiffs, by their undersigned attorneys, appeal to the Supreme Court of Porto Rico only from that part of the judgment rendered and entered in this case on January 30, 1918, by the District Court of Ponce and communicated February 4, 1918, whereby it is adjudged "that defendant Jose J. Benitez has possessed the three properties involved in this suit in good faith from June 5, 1908, when he acquired the said properties by purchase, until the date on which the said defendant was summoned in this action;" plaintiffs also appeal from that part of the said judgment whereby the lower court refused to fix the amount of the profits to be restored by the defendants, as well as from that part of the said judgment which reads: "the court not having a basis within this suit for determining the amount of the profits for lack of proof, the same will be duly fixed in the execution of the judgment or by a separate action;" and they also appeal from that part of the said judgment whereby the counter-claim of defendants Jose J. Benitez Diaz and his wife Carlota Sampayo y

Guzman, now her succession, is sustained in part and the plaintiffs are adjudged to pay to said defendants the sum of \$1,466.66 each.

Ponce, P. R., March 1, 1918.

JOSE A. POVENTUD,
ALBERT S. POVENTUD,
Attorneys for Plaintiff-Appellants.

Service.

I, Amador Riera Coronas, under oath, declare: that today, March 1, 1918, I deposited in the post-office of this city of Ponce, where attorneys Jose A. and Alberto S. Poventud reside and have their office, who are the attorneys for aforesaid plaintiff-appellants, six registered envelopes each containing a true copy of the foregoing notice of appeal filed in the above-mentioned case by said plaintiff-appellants and that the postage was duly prepaid; that the said envelopes were addressed thus: one to Prudencio Eugui y Barriola, co-defendant, at his residence in Humacao, P. R.; another to Clementina Lugo Calzada, at her residence in Fajardo, P. R., No. 12 Pino street; another to Manuela Gonzalez Lugo, at her residence in Rio Piedras, P. R.; another to Maria Gonzalez Lugo, at her residence in San Juan, No. 56 Sol street; another to Aristides Gonzalez Lugo at his residence in Mameyales, Dorado, P. R.; another to Francisco Gonzalez Fagundo, who is the attorney for Jose J. Benitez Diaz, Diego Garcia Ortega and other co-defendants in this case, the said envelope being addressed to Humacao, P. R., where he resides and has his office; that the residence of each of these defendants is as mentioned
48 herein according to the information and belief of affiant; that there is a regular daily mail service between Ponce and Humacao, Ponce and Fajardo, Ponce and Rio Piedras, Ponce and San Juan and Ponce and Dorado; and that affiant lives in the city of Ponce, P. R., and is not an interested party in the above-mentioned suit.

AMADOR RIERA,
Affiant.

Affidavit No. 1715. Sworn to and subscribed before me by Amador Riera Coronas, of age, unmarried, a resident of Ponce, an employee, whom I personally know.

Ponce, March 1, 1918.

C. F. CHARDON,
Notary Public.

(There is a seal.)

Filed this first day of March, 1918.

FELIPE COLON,
Clerk,
By A. GOTAY PURCELL,
Deputy.

Motion for Extension of Time to File Statement of Case.

Now come the above-mentioned plaintiffs and move as follows:

That on this date they filed their notice of appeal from a part of the judgment rendered in this case and it being impossible for them to prepare and file the corresponding statement of the case and bill of exceptions within the legal period of 10 days, they move the court to extend that period for such purpose until March 31, 1918.

Ponce, March 1918.

Respectfully,

JOSE A. AND ALBERTO S. POVENTUD,
By JOSE A. POVENTUD,
Attorneys for Appellants.

Order.

In view of the foregoing motion the court hereby grants the plaintiff-appellants until the thirty-first day of March, 1918, to prepare and file the statement of the case and bill of exceptions.

Ponce, March 1st, 1918.

D. SEPULVEDA,
District Judge of Ponce.

Filed March 1st, 1918.

FELIPE COLON,
Clerk,

By A. GOTAY PURCELL.

49 *Defendants' Motion for Extension of Time.*

Now come the defendants Jose J. Benitez Diaz in his own right and as father with patria potestas over his minor unemancipated children Carlota and Jose Benitez Sampayo, Josefa, Arcadia and Teodosia Benitez Sampayo and Diego Garcia Ortega, by attorney Francisco Gonzalez Fagundo, and show:

That the notice of appeal was filed in this case on February 28th, and therefore the period within which to prepare and file the bill of exceptions and statement of the case will expire on the 9th instant. That in view of the volume of the documentary evidence presented in this suit it is impossible for the mover to prepare and complete said statement and bill of exceptions for the 9th instant.

Wherefore, they pray the court to extend the time until March 31st, 1918, for filing the said bill of exceptions and statement of the case.

Ponce, P. R., March 2, 1918.

FRANCO. GONZALEZ,
Attorney for Defendant-Appellants.

Filed this second day of March, 1918.

FELIPE COLON,
Clerk,

By A. GOTAY PURCELL.

Order.

The above motion is hereby granted.
Ponce, P. R., March 2, 1918.

D. SEPULVEDA,
District Judge.

Statement of the Case and Bill of Exceptions.

Be it remembered that this case was tried on May 5, 1917, after its proper setting on the docket, the plaintiffs having appeared by their attorney, Jose A. Poventud, and defendants Jose J. Benitez Diaz and his wife, Carlota Sampayo Guzman, substituted by her heirs, by their attorneys, Herminio Diaz Navarro and Rafael Rivera Zayas, and defendant Diego Garcia Ortega by his attorney, Francisco Gonzalez Fagundo, Hon. Domingo Sepulveda presiding.

Before going to trial the defendants, with the acquiescence of the plaintiffs, filed a motion for the substitution of parties with
50 respect to co-defendant Carlota Sampayo, and the court ordered that this deceased defendant be substituted by her representatives and sole heirs, Jose J. Benitez Diaz, surviving spouse, Arcadia and Teodosia Benitez Sampayo, of age, and Carlota, Josefa and Jose Benitez Sampayo, minors.

Thereupon the complaint was read wherein it is alleged:

"That plaintiff Arturo Aponte, Jr., is of age and appears as guardian ad litem and in representation of the minors Carlota and Clementina Gonzalez y Lugo, having been duly and lawfully appointed as such by this court, and the other plaintiff, Manuel Gonzalez y Lugo, appears in his own right.

"That on and before June 5, 1908, the two minor plaintiffs as well as plaintiff Manuel Gonzalez Lugo were and continue to be under the law the owners in common and pro indiviso of three-sixths of an undivided half of each of the three following properties:

(a) Rural Property—A farm called "Los Puentes" situated in a place of the same name in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 36.223 cuerdas, equivalent to 14 hectares and 23 ares, of mostly valley land, crossed by a road, bounded on the north by lands of Juan Buso and the Blanco river, which separates it from the land of Cercado Ramirez, now of Garzot and Fuertes; on the east by said Blanco river, the land of said Cercado Ramirez and the lands of Francisco Buso, at right angles with the river Anton Ruiz; on the south by land of Francisco Buso, at right angles with the river Anton Ruiz, and on the west by lands of Juan Buso, at right angles with said river Anton Ruiz.

(b) A property known as "Islote Quinones" situated in the Ward of Rio Abajo of the municipality of Naguabo, composed of 88.95 cuerdas, equivalent to 34 hectares and 23 ares, bounded on the north by the Viejo river, which separates it from the land of Maldonado

now of Palmer, and from lands of Torres, now of Petronila Patricia Rios; on the east by lands of Carmen Fuertes; on the south by the river Blanco of Naguabo, which separates it from lands of the succession of Jose Rios y Berrios, and on the west by the said river, the "Mulas" plantation and the Torres property.

(c) A farm called "Madama Duran" situated in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 107.468 cuerdas, equivalent to 42 hectares and 24 ares, of low and mountain land, bounded on the north by the Blanco river, which separates it from the Ramirez property, now the property of Garzot and Fuertes, and in part, of lands of the succession of Ramon Argueso; on the east partly by the said Blanco river, which separates it from the Ramirez property and part of the lands of Juan Buso, and on the west by lands of the succession of Ramon Argueso.

"The said plaintiffs acquired the said condominiums by testate inheritance from their deceased father, Manuel Gonzalez Fernandez, the properties described having been recorded in the names of the plaintiffs and other persons mentioned in the next paragraph by hereditary right, in the Registry of Property of Humacao, the said undivided interests having been awarded to them in the corresponding public deed of partition which was executed and extended by the interested parties before this date.

"That the remaining shares in the said properties, on and before June 5, 1908, belonged to defendants Clementina Lugo Calzada and Aristides, Maria and Manuela Gonzalez y Lugo, under the same title as that of the plaintiffs as set forth in the preceding paragraph, and the said persons have been made co-defendants because they did not consent to be joined as parties plaintiffs in this suit.

"That in San Juan, P. R., on June 5, 1908, before notary Antonio de Aldrey, of Humacao, Maria and Manuela Gonzalez y Lugo and Clementina Lugo y Calzada, the said Clementina in her own right and in representation of her then minor children under her patria potestas, plaintiffs Manuel, Carlota and Clementina Gonzalez y Lugo, executed the public deed of purchase and sale No. 68 and co-defendant Aristides Gonzalez y Lugo, in favor of Jose J. Benitez Diaz, who was then married to co-defendant Carlota Sampayo y Guzman, and by that deed the first two vendors conveyed to said defendant Benitez Diaz their respective shares in the three properties described, and the undivided interests and rights in the said three properties of the said three plaintiffs, as set out in the second paragraph of this complaint, were likewise conveyed to him by Clementina Lugo y Calzada as the mother of the said three plaintiffs, who then were all minors, all for the lump sum of seventeen thousand, six hundred dollars (\$17,600). The said deed was recorded in the Registry of Property of Humacao, P. R., at folio 141, volume 10 of Naguabo, property No. 454, duplicate, entry 10th, as to the first property; at folio 242 reverse, volume 10 of Naguabo, property No. 456, duplicate, entry 9th, as to the second, and at folio 24, volume 11 of Naguabo, property No. 453, duplicate, entry 10th, as to the third property.

52 "That in order to make the said sale in the names of the said plaintiffs co-defendant Clementina Lugo y Calzada did not obtain the corresponding authorization of the court of jurisdiction, which was the District Court for the Judicial District of Humacao, P. R., within which the municipality of Naguabo was included on and before June 5, 1908, and in which, at that time and now, the said three properties so sold and purchased were and are situated; but for that purpose she petitioned for and obtained, on May 27, 1908, a so-called authorization from the District Court of San Juan, P. R., Section 1, which authorization was and is null and void ab initio because the said court had no jurisdiction of the matter, consequently the said sale, in so far as concerns the said plaintiffs, is also null and void, and that fact was known to Jose J. Benitez before the execution of the aforesaid deed of purchase and sale.

"That according to the information and belief of the plaintiffs the said Jose J. Benitez has been unlawfully in possession, without good faith or colorable title, of the said undivided shares belonging to the plaintiffs in the said three properties since June 5, 1908, the rents and profits of the said undivided shares during the time the plaintiffs have been deprived of their possession and enjoyment amounting to the estimated sum of eight thousand, five hundred dollars, which the said defendant has unlawfully appropriated to himself.

"That according to the information and belief of the plaintiffs, the said undivided portions belonging to said plaintiffs in the three described properties have now a value of more than ten thousand dollars.

"That by a deed of March 18, 1910, executed before notary Antonio de Aldrey, defendant Jose J. Benitez and his said wife leased the property described under letter (b) to co-defendant Prudencio Eugui y Barriola for a term of ten years, the facts alleged under counts IV and V of this complaint appearing from the Registry of Property of Humacao and being known to the said lessee before the execution of the said deed of lease, which was recorded at folio 173, volume 13 of Naguabo, property No. 456, triplicate, entry 10th.

"That by a public deed executed before notary Francisco Gonzalez Fagundo on June 7, 1913, the said defendant Benitez Diaz and his said wife created a voluntary mortgage on the said three described properties in favor of defendant Diego Garcia y Ortega to secure him the sum of \$15,000, the facts alleged under counts IV and V of this complaint appearing from the Registry of Property of Humacao and being known to the said mortgagee before the execution of the
53 said mortgage deed which was likewise recorded in the Registry of Property of Humacao, P. R.

"That the original complaint in this case was filed in the court on September 8, 1913."

The complaint terminates with the prayer that after due process of law judgment be rendered in favor of the plaintiffs and against the defendants, as follows:

(1) That the authorization granted by the District Court of San Juan, Section 1, on May 29, 1908, referred to in count V, as well as

the deed of purchase and sale of June 5, 1908, referred to in count IV of this complaint, in so far as they affect the said interests of the said three plaintiffs in the properties described, are absolutely null and void and without legal effect, ordering the cancellation of the record of such purchase and sale as to the said condominiums of the said three plaintiffs.

(2) That the said three plaintiffs are the owners in common pro indiviso of three-sixths of an undivided half of the three described properties, ordering a division of the said property held in common by the three plaintiffs and defendant Jose J. Benitez and the delivery by the latter to the former of such portions as may be shown to belong to them.

(3) That the deeds of lease and mortgage referred to in counts VIII and IX of the complaint are null and void and without legal effect in so far as they may affect the said rights of the plaintiffs in the said properties, ordering the cancellation of the records of the said deeds as regards the shares of the said three plaintiffs in the said properties.

(4) That the said defendant, Jose J. Benitez, owes and shall pay to the said plaintiffs the sum of eight thousand and five hundred dollars as the rents and profits of their said interests and that the said defendants and all others opposing this suit shall pay the costs, disbursements and plaintiffs' attorney fees, and that the court grant any other relief consistent with the allegations of this complaint.

This complaint was duly sworn to by the guardian ad litem of the minors, Arturo Aponte, Jr.

Defendant Diego Garcia Ortega filed a verified answer to the complaint wherein he alleged:

54 First. He admits that the first count is true.

Second. He denies that the plaintiffs are the owners of three-sixths of an undivided half of the three properties described in the second count of the complaint.

Third. That the third count is true.

Fourth. That the fourth count is true.

Fifth. He denies that the authorization of the District Court of San Juan, referred to in the 5th count is null and void and also denies that the sale made to Jose J. Benitez is null and void.

Sixth. He denies the seventh count for lack of information.

Seventh. He admits as true the 9th count in so far as it refers to the creation of the mortgage and to the amount of the loan, but denies that any mortgage was created on the property "Los Puentes," and also denies the other matters set us in the said count.

Eighth. As a defense it is alleged:

(a) That the minor plaintiffs profited and were benefited by the sale of the properties to Jose J. Benitez.

(b) That on June 7, 1913, and now Diego Garcia Ortega was and is married to Geonoveva Andino Solar.

(c) That on June 7, 1913, it did not appear from the Registry of Property of Humacao that any petition had been presented or any order made declaring the nullity of the deed of June 5, 1908, executed in favor of Jose J. Benitez.

(d) That the complaint does not state facts sufficient to constitute a cause of action.

And he concludes by praying for judgment dismissing the complaint with costs, etc.

Defendant's Jose J. Benitez and his wife, Carlota Campayo y Guzman, by their attorneys, also filed a verified answer to said complaint wherein they allege:

"First. They admit the allegation of the first count of the complaint as to the personality and representation of Arturo Aponte, Jr., of the minors Carlota and Clementina Gonzalez Lugo.

"Second. These defendants deny the following allegations of the second and third counts of the complaint: (a) That on and before June 5, 1908, the two minor plaintiffs and plaintiff Manuel
55 Gonzalez Lugo were and are in law the owners in common and pro indiviso of three-sixths of an undivided half of each of the three rural properties described in the second count of the complaint; (b) that said three-sixths parts were acquired by them by testate inheritance from their deceased father; (c) that their interests appear of record in the registry of property by title of adjudication made in the corresponding public deed of partition executed and extended by the interested parties before the complaint was filed.

"Third. These defendants in turn allege:

"1st. That Manuel Gonzalez y Fernandez acquired the three said properties by purchase from Santiago R. Palmer and his wife, Catalina Romaguera, by a public deed executed in San Juan on August 6, 1904, before notary Julio Cesar Gonzalez, which is recorded in the Registry of Property of Humacao.

"2nd. That Manuel Gonzalez y Fernandez died on March 19, 1904, leaving a will made on March 17, 1904, before notary Santiago R. Palmer, in which he designated as his sole and universal heirs in equal portions his six children born of his marriage with Clementina Lugo Calzada and named, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo, and his said wife as to the part assigned her by the law, and declared also that all of his properties were ganancial. The said members of the Gonzalez succession instead of proceeding to make an inventory, appraisalment, liquidation, partition and award of the estate and obtaining the court's ap-

proval of the same, presented in the registry of property of Humacao a copy of the said will, a certificate of the death of the testator and a petition for a record, in common pro indiviso and without specifying the share corresponding to each one of the interested parties, of the aforesaid three properties in the names of the widow, Clementina Lugo Calzada, and of the said children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo. The record was so made on June 12, 1908.

"3rd. That there is no record or mention in the Registry of Property of Humacao under any date of an inventory, appraisal, liquidation, division and award of the three said properties of the estate left by the said deceased Manuel Gonzalez y Fernandez of which mention is made in the complaint.

"Fourth. As to the allegations of the fourth count of the complaint, these defendants admit that, according to a public deed executed in San Juan on June 5, 1908, before notary Antonio de Aldrey by Clementina Lugo Calzada in her own right and
56 in representation of her then minor and unemancipated children Manuel, Carlota, Clementina and Aristides Gonzalez Lugo, by Maria and Manuela Gonzalez Lugo and by Jose J. Benitez Diaz, then married to Carlota Sampayo y Guzman, the former parties sold to Benitez Diaz the whole of the three properties in litigation for the lump sum of \$17,600, the said deed having been recorded in the Registry of Property of Humacao and the vendors having received the aforesaid sum.

"Fifth. As to the allegations of the fifth count of the complaint, we admit that Clementina Lugo Calzada, in order to make the said sale in the names of her then minor children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, did not ask for authorization from the District Court for the Judicial District of Humacao wherein the properties are situated, and we admit also that for that purpose she asked and obtained, on May 29, 1908, such authorization from the District Court of San Juan, Section 1, but we deny that that authorization was or is null and void because the said court had no jurisdiction, or that, consequently, the said sale is also null and void with regard to the plaintiffs, or that these facts were known to defendant Jose J. Benitez prior or subsequent to the execution of the said deed of purchase and sale.

"And we allege on our part that even if Judge Aldrey had had no jurisdiction when he made the order in question, that order was validated later by decisions of the Supreme Court of Porto Rico.

"Sixth. We deny the allegations of the sixth count of the complaint that since June 5, 1908, Benitez has been in possession unlawfully and without faith or color of title of the said undivided interests of the said minors in the three properties described. We deny that the rents and profits corresponding to such shares during the time specified in the complaint amount to \$8,500, or that Benitez has unlawfully appropriated them. And instead we allege:

"That by deed executed in Humacao on the 2d of September, 1914, before notary Francisco Gonzalez Fagundo, which is recorded in the registry of property, Jose J. Benitez, with the consent of his wife, Carlota Sampayo, sold the property referred to under letter (a) in the second count of the amended complaint to Manuel Rodriguez Gonzalez, Jose Fuertes, married to Mercedes Garzot, and Faustino R. Fuertes, married to Carmen Garzot, who have been the actual possessors and owners of the said property from the said date until now.

57 "That by a public deed executed in Humacao on October 3, 1913, before notary Francisco Gonzalez Fagundo, which is recorded in the Registry of Property, defendant Benitez, with the consent of his wife, sold the property described under letter (b) of the second count of the complaint to Cristina Alvarez y Garriga, married, property owner and resident of Naguabo, who since has been and is now the only possessor and owner of the property.

"That by a public deed executed in Humacao on September 2, 1914, before notary Francisco Gonzalez Fagundo, which is recorded in the registry of property, defendant Benitez, with the consent of his wife, sold the property described in the second count of the complaint under letter (c) to said Manuel Rodriguez Gonzalez, Jose R. Fuertes, and Faustino R. Fuertes, Jr., who have been the owners and possessors of the property since the said date.

"That in purchasing the properties in litigation, and especially the shares of the monors in them, Jose J. Benitez acted in the firm belief that the order of the District Court of San Juan, of May 29, 1908, was, as it is, an order authorized by law under which the said contract could be lawfully entered into, as it was.

"Seventh. The seventh allegation of the complaint, that the undivided interests in the three properties in litigation now have a value of more than ten thousand dollars, is denied for lack of information and belief.

"Eighth. As to the allegation of the eighth count of the complaint, we admit it, except that what is there alleged was known to Prudencio Eugui, which we deny, inasmuch as the title of the lessor had absolutely no fatal defect.

"Ninth. We admit the allegations of the ninth count of the complaint as regards the mortgage therein mentioned, but we deny that the mortgagee had any knowledge that the title of the mortgagor had any fatal defect, for it had not and has not.

"Tenth. We admit that the original complaint in this case was filed in the clerk's office of the court on September 8, 1913.

"Eleventh. And these defendants also allege that, as it appears from the registry of property, the properties in question are subject to a mortgage in favor of the People of Porto Rico as security for certain notaries.

"Twelfth. And these defendants allege that on account of the foregoing allegations of this answer the following persons are neces-

sary parties to this suit: Manuel Rodriguez Gonzalez, Jose R. Fuertes, Mercedes Garzot, Faustino R. Fuertes, Cristina Alvarez y Garriga and the People of Porto Rico.

58 "Thirteenth. These defendants also allege that the complaint does not state facts sufficient to constitute a cause of action as to them.

"Fourteenth. They further allege as a reconvention that the said sale of the undivided shares belonging to the minor plaintiffs was made, on account of the urgent necessity in which they then were of paying contracted debts, among them, costs and attorney fees in a suit brought by them to defend the properties in question; and we further allege that the sale was necessary and beneficial and that they profited by the purchase price, which was used for paying the aforesaid debts and to save their titles to these properties, because they thus avoided attachments and forced sales in suits for the said debts."

They conclude by praying that the complaint be dismissed, with the costs, expenses, disbursements and attorneys' fees against the plaintiffs; or that should the court hold that the contract of purchase and sale is null and void, then these defendants pray that the plaintiff be adjudged to return to the defendants the sum of \$17,600, with interest from the date of the said sale.

The plaintiffs filed an answer to the counter-claim of defendants Jose J. Benitez Diaz et al., alleging:

"First. That the new matter of the so-called reconvention as stated in the 14th paragraph of the amended answer of defendants Jose J. Benitez et al., does not state facts sufficient to constitute a counter-claim against the plaintiffs.

"Second. The plaintiffs have not sufficient information or belief regarding the allegation made in the 14th paragraph of the said amended answer of defendants Jose J. Benitez et al., as constituting the alleged reconvention so as to be able to answer the same; therefore they specifically deny the said 14th paragraph of the said amended answer in all its parts and conclude by praying that said reconvention be dismissed."

The foregoing pleadings having been read, the plaintiffs introduced their evidence as follows:

In the first place they offer in evidence as Exhibit A a certificate issued by the clerk of the District Court of San Juan, First Section, of January 17, 1916, attesting the authorization granted by the said court for the sale of the properties involved herein, and situated in Naguabo, within the judicial district of Humacao. No objection was made by the defendants to the said document and it was admitted by the court. It reads as follows:

"In the District Court for the Judicial District of Juan, P. R.,
Section 1.

No. 2296.

Ex Parte CLEMENTINA LUGO, Widow of Gonzalez.

Authorization.

On the 27th of May, 1908, and in open court came the petitioner, Clementina Lugo y Calzada, widow of Gonzalez, by her attorney and filed a petition, which was duly verified, requesting the court to authorize her to sell the share belonging to her minor children, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, in the undivided share which they possess in common with the petitioner and her other two married daughters, Maria and Manuela Gonzalez y Lugo, in properties in the ward of Rio Abajo of the Municipality of Naguabo composed of six properties described as follows:

"A. Property named Islote, or Islote de Rivolta, consisting of 150 cuerdas of first class land, equivalent to 58 hectares, 96 acres, situated in the ward of Rio Abajo of the Municipality of Naguabo and bounded on the north by a stream called Rio Viejo which separates it from lands Juan Garzot; on the east by the same Rio Viejo which separates it from the land of Ramirez, formerly of Manuela Gutman, widow of Bustelo, now of Palmer, up to the confluence of this stream with the river called Moderno; on the south by the river named Blanco Moderno which separates it from other lands belonging to the heirs of Pilar Ojeda; and on the west by lands of Cristina Lebron and the estate of Ramon Argueso, starting from a bamboo tree on the margin of the river Blanco and down to the confluence of a ditch with and and to the said stream.

"B. Property named 'Madama Duran,' situated in the ward of Rio Abajo in the municipality of Naguabo, consisting of 107,468 cuerdas, equivalent to 42 hectares, 24 acres, of low and mountain land, bounded on the north by the Rio Blanco which separates it from the Ramirez property formerly of Manuela Gutman and now of Garzot and Fuertes, and by a part of the land belonging to the estate of Ramon Argueso; on the east partly by the said Blanco River which separates it from said Ramirez property and a part of the lands of Juan Buso; on the south by lands of Juan Buso, and on the west by lands of the estate of Ramon Argueso.

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"C. A property known as 'Los Puentes,' situated in the place bearing the same name, ward of Rio Abajo of the Municipality of Naguabo, consisting of 36.223 cuerdas, equivalent to 14 hectares, 23 ares of mostly low land crossed by a road and bounded on the north by lands of Juan Buso and the Rio Blanco which separates it from the property of Ramirez, now Garzot and Fuertes; on the east by the said Rio Blanco, dividing line of said

Ramirez property and lands of Francisco Buso, at right angles with the river Anton Ruiz; and on the west by lands of Juan Buso, at right angles with the said Anton Ruiz river.

"D. A property known as Cercado de Torres and also as 'Maizales,' situated in the ward of Rio Abajo of Naguabo, consisting of 123.140 cuerdas, equivalent to 48 hectares, 39 ares, 87 centares, of first class and hilly land, bounded on the north and east by lands of Jesus Pereyo; on the south by land of Petronila Patricia Rios y Gutman; and on the west by lands of Ramon Villamil and Marcelino Borges.

"E. Property known as Cercado Maldonado situated in the ward of Rio Abajo of the municipal district of Naguabo, consisting of 35.190 cuerdas, equivalent to thirteen hectares, 66 ares and 11 centare, bounded on the north by lands of Jesus L. Pereyo; on the east by a brook separating it from the lands of Jesus L. Pereyo and the Rio Viejo which separates it from the property called Islote Quinones and from the lands of Ramon Argueso or his succession; on the south by the Rio Viejo which separates it from the property Islote Quinones, now of Palmer; and on the west by a brook which separates it from the lands of Cercado Torres, now of Santiago R. Palmer.

"F. Property known as Islote Quinones situated in the ward of Rio Abajo of the municipal district of Naguabo, composed of 88.095 cuerdas, equivalent to 34 hectares, 23 ares, bounded on the north by the Rio Viejo which separates it from Cercado Maldonado, now of Palmer, and from lands of Cercado Torres, now of Carmen Fuertes; on the south by the Rio Blanco of Naguabo, which separates it from lands of succession of Jose Rios y Berrios; and on the west by the said river, the property 'Mulas' and Cercado Torres."

The plaintiffs offered their evidence which was examined and admitted, and the court, in view of the petition and of the evidence authorizes the petitioner, Clementina Lugo, widow of Gonzalez, to sell the share belonging to her minor children in the described property, the sale to be made for not less than forty-eight thousand 61 dollars, with which she shall pay the debts referred to in the petition and invest the remainder of the money belonging to the minors in urban properties for the benefit of the minors.

Given under my signature in open court, today, May 29, 1908.

PEDRO DE ALDREY.

Attest:

A. MARIN MARIEN,

Deputy Clerk.

I, Celestino Marrero Hernandez, Clerk of the District Court for the Judicial District of San Juan, P. R., do hereby certify that the foregoing is a true and faithful copy of the original decision rendered in this suit by the court and attached to the record, which is final inasmuch as no appeal has been taken therefrom. And at the

request of attorney Arturo Aponte, Jr., I issue this copy in San Juan, P. R., this seventeenth day of January, 1916.

C. MARRERO,
Clerk.

By FRANCO. NEGRONI,
Deputy.

(The seal is properly affixed.)

Plaintiff. It appearing from this evidence that the date of the petition was May 27, 1908, and not May 29th, as stated in the complaint, the plaintiff asks leave of the court to amend paragraph 5th of the complaint so that it may read "27th of May" instead of "29th of May".

No objection being made by the defendants the court allows the amendment, which is interlined in the original complaint.

The plaintiff offered in evidence deed No. 68 of purchase and sale executed by Maria and Manuela Gonzalez Lugo and Clementina Lugo Calzada in their own right and in representation of the latter's minor children Aristides, Manuel, Carlota and Clementina Gonzalez Lugo in favor of Jose J. Benitez Diaz on June 5, 1908, before notary Antonio de Aldrey of Humacao, by virtue of which the sale attacked in this suit was made to Jose J. Benitez Diaz.

The court admits the document without objection from the adverse party and it is marked "Exhibit B" of the plaintiff.

The said document reads:

Purchase and Sale.

Number Sixty-Eight.

62 In the city of San Juan, Porto Rico, June 5, 1908, before me, Antonio de Aldrey y Montolio, a notary public of the island of Porto Rico, with residence and an office in the city of Humacao, and the witnesses who will be mentioned hereafter, Appear:

1. Clementina Lugo Calzada, widow, land-owner, fifty years of age and resident of Rio Grande;

2. Maria Gonzalez y Lugo, married, land-owner, twenty-three years of age and residing in the same town;

3. Manuela Gonzalez y Lugo, married, land-owner, twenty-one years of age and residing in the said town; and

4. Jose J. Benitez Diaz, land-owner, forty-two years of age, married to Carlota Sampayo Guzman and a resident of the island of Vieques.

All are parties to this instrument in their own rights and Clementina Lugo Calzada also appears as mother with patria potestas over her unemancipated minor children Aristides, Manuel, Carlota and

Clementina Gonzalez Lugo, she having been duly authorized by the District Court for the Judicial District of San Juan, First Section, to sell the share of her six children in six properties described in the order of the court, three of the six properties being the subject-matter of this contract, the said order having been made in open court on May 29th of the year last past by Judge Pedro de Aldrey before deputy clerk A. Marin Marien which order has been shown to me, the said Clementina Lugo binding herself to present the same in the Registry of Property of Humacao, should it be required, for the recording of this document.

I, the Notary, certify as to the knowledge, profession and residences of the parties appearing herein as well as to their age and civil status according to their statements assuring me that they are in their full enjoyment of their civil rights, and nothing to the contrary being known to me, and having, in my opinion, the proper legal capacity to execute this deed of purchase and sale they state as follows:

1. That the first three parties appearing herein and the minors represented by the first are the owners in fee and in common pro indiviso of the following properties:

"A property known as 'Los Puentes' situated in the place bearing the same name, ward of Rio Abajo of the Municipality of Naguabo, consisting of 36.223 cuerdas, equivalent to 1463 hectares, 23 ares, of mostly low land crossed by a road and bounded on the north by lands of Juan Buso and the Rio Blanco which separates it from the property of Ramirez, now Garzot and Fuertes; on the east by the said Rio Blanco, dividing line of said Ramirez property and lands of Francisco Buso, at right angles with the river Anton Ruiz; on the south by Francisco Buso at right angles with the river Anton Ruiz; and on the west by lands of Juan Buso, at right angles with the said Anton Ruiz river.

"Property known as 'Islote Quinones', situated in the ward of Rio Abajo of the Municipal District of Naguabo, composed of 88.095 cuerdas, equivalent to 34 hectares, 23 ares, bounded on the north by the Rio Viejo which separates it from Cercado Maldonado, now of Palmer, and from lands of Cercado Torres, now of Petronila Patricia Rios, on the east by lands of Carmen Fuertes; on the south by the Rio Blanco of Naguabo, which separates it from lands of succession of Jose Rios y Berrios; and on the west by the said river, the property 'Mulas' and 'Cercado Torres.'

"A property named 'Madama Duran,' situated in the ward of Rio Abajo in the municipality of Naguabo, consisting of 107.468 cuerdas, equivalent to 42 hectares, 24 ares, of low and mountain land, bounded on the north by the Rio Blanco which separates it from the Ramirez property now of Garzot and Fuertes, and by a part of the land belonging to the estate of Ramon Argueso; on the east partly by the said Blanco River part of the lands of Juan Buso; on the south by lands of Juan Buso; and on the west by the lands of the estate of Ramon Argueso."

2. That they acquired the said properties by inheritance from her deceased husband and father, Manuel Gonzalez y Fernandez, who named them as his heirs in the will which he left at his death, executed under number 256 in the ward of Mameyes 2nd. of Rio Grande on August 17, 1904, before notary Santiago R. Palmer e Irizarry, the said properties not yet being recorded in the Registry of Property, but the grantors binding themselves to have them recorded as soon as possible, wherefore I, the Notary, advised them that this contract could not be recorded in the name of the purchaser until the said requirement is complied with.

3. That according to the statements of the parties of the first part, there are no encumbrances or liens on the said described
64 properties, for while it is true that the said properties appear in the Registry of Property of Humacao with a note of the nullity of the sale by reason of the action brought by Maria Rios de Rubio against Victor Bursat et al., by virtue of the decision of the Supreme Court of the United States and of the order of the Hon. B. S. Rodey, Judge of the United States District Court for Porto Rico made on the first instant, the said marginal notes will be cancelled in the said registry.

4. The first three parties of the first part in the character in which they appear, have agreed with the fourth to sell the properties described for the sum and under the conditions which will be mentioned.

Wherefore they consummate the agreement made and execute this deed in the manner stated in the following clauses:

First. The vendors Maria and Manuela Gonzalez Lugo and Clementina Lugo y Calzada, the latter not only in her own right but also in the names of her minor children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo and by virtue of the authorization granted by the District Court of this Judicial District, First Section, convey their ownership of the three described properties to the vendee Jose J. Benitez Diaz, and his successors, with all the appurtenances, uses, real and personal rights and any other right that they might have, without any reserve so that he hold them as owner thereof and in the same manner as the vendors have possessed them until now, for and in consideration of the lump sum of seventeen thousand and six hundred dollars, current and legal money of the United States, which sum the vendors acknowledge having received to their satisfaction from the vendee prior to the execution of this deed. Wherefore, I the notary, advised them that the receipt of the purchase price being acknowledged, the properties sold are free from all claims as to the purchase price although thereafter it should be shown that no delivery of the purchase price was made in whole or in part.

Second. The contracting parties declare: that the seventeen thousand and six hundred dollars, the purchase price, is the just and true value of the properties sold and that when this deed is recorded in the Registry of Property the contract will not be annulled nor

rescinded to the prejudice of third parties for any of the reasons provided in section 38 of the Mortgage Law; and the parties
 65 mutually designate the city of Humacao as the place for all acts and proceedings, judicial or extrajudicial, that might arise from the performance of this contract.

Third. The parties state that the succession of Gonzalez and Jose A. Diaz y Gomez have entered into an agreement by which the former would sell to the latter the property called "Madama Duran", and the latter to the former the property called "El Zarzal", situated in the District of Rio Grande; and by virtue of the deed of dissolution of the agricultural society of Diaz & Benitez, executed before me in the city of Humacao, the said rights were all transferred to Jose J. Benitez Diaz, the fourth party appearing herein, so that Benitez now acquiring the property "Madama Duran", the succession of Gonzalez and by another separate deed he will acquire the ownership of the property "El Zarzal".

Fourth. The purchaser, by the execution of this deed alone, acquires, therefore, the full enjoyment and exercise of all rights in the properties in question corresponding to the vendors, who formally warrant the title.

Fifth. The purchaser having been advised of the terms of the present deed, stated that he accepted it in all its parts as it agrees with all the stipulations of the contract.

I, the Notary, informed the parties as follows: First, that a reserve is made in favor of The People of Porto Rico and of the municipality of Naguabo of their preferred lien for unpaid taxes on the properties in question in the manner provided by law; Second, that a copy of this deed should be presented in the Registry of Property of Humacao for record, otherwise it will not affect third persons nor be admitted in the courts or Government offices except in the manner and cases provided by the Mortgage Law.

Such is the new title of ownership created by the parties so that it may be recorded in the name of the purchaser by virtue of this public instrument, and they promise in the most solemn manner under the law to comply with its terms.

Thus it was stated, executed and signed in the presence of the witnesses, who are residents, of age and without legal impediment as such, and I certify that I know Rafael Tirado and Ricardo Amado, after having read this instrument to all of the parties concerned who waived their right to read it by themselves, as to
 66 which I advised them, all of which I, the notary, certify.

CLEMENTINA LUGO, *Widow of Gonzalez.*
 MARIA GONZALEZ DE JULIA.
 MANUELA GONZALEZ DE RODRIGUEZ.
 JOSE J. BENITEZ.
 ANTONIO DE ALDREY,

Notary.

RAFAEL TIRADO VERRIER.
 RICARDO AMADO.

This is a true and faithful copy of the original which appears in my general protocol of public instruments corresponding to the year one thousand nine hundred and eight to which I refer. I so certify and at the request of attorney Arturo Aponte, Jr., I issue this copy, which I sign, mark and rubricate in four sheets of my notarial paper, and attach an internal revenue stamp as provided in the Notarial Law after making a memorandum of this certificate in Humacao, Porto Rico, this twenty-sixth day of March, 1913.

ANTONIO DE ALDREY,

Notary.

(Here is a seal.)

The plaintiffs offer in evidence a *lis pendens* notice in this case issued by the Registrar of Property of Humacao, Miguel Planellas, on September 15, 1913, showing that the complaint was duly recorded

No objection is made by the defendant to the admission of the document, which is marked by the Court as "Exhibit C" of plaintiff, and reads as follows:

In the District Court for the Judicial District of Ponce, P. R.

Civil. No. —.

ARISTIDES GONZALEZ Y LUGO, in His Own Right and as Guardian ad Litem of the Minors Manuel, Carlota, and Clementina Gonzalez y Lugo,

v.

JOSE J. BENITEZ and His Wife, CARLOTA SAMPAYO GUZMAN, CLEMENTINA Lugo Calzada, Maria, Manuela Gonzalez Lugo, Prudencio Eugui y Barriola, and Diego Garcia Ortega.

Nullity, etc.

Lis Pendens Notice.

To the Registrar of Property of Humacao, P. R.:

The undersigned, attorneys for the above-named plaintiffs, present in that registry this *lis pendens* notice for due annotation
 67 thereof on the margin of entries 10, 9 and 9, at folios 141, 242 reverse, and 24 of volumes 13, 10 and 11 of Naguabo, properties numbers 454 duplicate, 456 duplicate and 453 of duplicate respectively, or of the former or subsequent records of said properties, in accordance with section 91 of the Code of Civil Procedure, and state:

1. The suit to which the said notice refers is entitled as aforesaid, it being an action for the annulment of the authorization given by the San Juan District Court, First Section, on May 29, 1908, per-

mitting the co-defendant, Clementina Lugo Calzada, in the name of the plaintiffs, to sell three rural properties which will hereafter be described and which are situated in Naguabo, of the judicial district of Humacao, of which the aforesaid plaintiffs were and are the owners in common and undivided of three-sixths of the half.

2. For the annulment of a deed of purchase and sale of June 5, 1908, executed by Maria and Manuela Gonzalez y Lugo and Clementina Lugo Calzada, the latter in her own right and in the names of her minor children under her patria potestas, plaintiffs as aforesaid, in favor of Jose J. Benitez Diaz, who purchased while married to co-defendant Carlota Sampayo y Guzman, before notary Antonio de Aldrey, of Humacao, the former having sold to said defendant Benitez Diaz their said shares in the properties, and said Clementina Lugo Calzada, as the legitimate mother of the plaintiffs, then all minors, having also conveyed their undivided joint interests in the said three described properties, amounting to four-sixths of an undivided half of each of the said properties, to wit:

(a) Rural Property.—A farm called "Los Puentes" situated in a place of the same name in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 36.223 cuerdas, equivalent to 14 hectares and 23 ares, of mostly valley land, crossed by a road, bounded on the north by lands of Juan Buso and the Blanco river, which separates it from the land of Cercado Ramirez, now of Garzot and Fuertes; on the east by said river Anton Ruiz; on the south by land of Francisco Buso, at right angles with the river Anton Ruiz, and on the west by lands of Juan Buso, at right angles with said river Anton Ruiz.

68 (b) A property known as "Islote Quinones" situated in the Ward of Rio Abajo of the municipality of Naguabo, composed of 88.95 cuerdas, equivalent to 34 hectares and 23 ares, bounded on the north by the Viejo river, which separates it from the land of Maldonado now of Palmer, and from lands of Torres, now of Petronila Patricia Rios; on the east by lands of Carmen Fuertes; on the south by the river Blanco of Naguabo, which separates it from lands of the succession of Jose Rios y Berrios, and on the west by the said river, the "Mulas" plantation and the Torres property.

(c) A farm called "Madama Duran" situated in the Ward of "Rio Abajo" of the municipality of Naguabo, composed of 107.468 cuerdas, equivalent to 42 hectares and 24 ares, of low and mountain land, bounded on the north by the Blanco river, which separates it from the Ramirez property, now the property of Garzot and Fuertes, and, in part, of lands of the succession of Ramon Argueso; on the east partly by the said Blanco river, which separates it from the Ramirez property and part of the lands of Juan Buso, and on the west by lands of the succession of Ramon Argueso.

The said deed of purchase and sale was recorded at the folios and volumes and under the numbers stated at the beginning, and can-

celling the said entries as regards the said joint interests belonging to the four minor plaintiffs.

3. That it be adjudged that the said plaintiffs are the owners in common of four-sixths of an undivided half of the three described properties, and therefore that defendant Jose J. Benitez restore the said joint intersts to the plaintiffs.

4. That the said defendant, Jose J. Benitez Diaz, be adjudged to pay to the plaintiffs the sum of six thousand dollars for the rents, profits and use of the said joint interests of the plaintiffs, and that the said defendant and others who may oppose this suit be adjudged to pay the costs, disbursements and attorneys' fees of the plaintiffs.

5. That the deeds of lease and mortgage affecting the said properties executed by defendant Jose J. Benitez Diaz and his wife in favor of defendant Prudencio Eugui y Barriola and co-defendant Diego Garcia Ortega on May 18, 1910, and June 7, 1913, respectively, the former being recorded at folio 173, reverse, volume 13 of Naguabo, property No. 456, duplicate, entry 13, and the latter being also recorded in the Registry of Property of Humacao, P. R., are null and void, and that an order be made for the cancellation of the entries thereof as regards the rights of the plaintiffs in the said properties.

Ponce, as for Humacao, September 8 1913.

JOSE A. POVENTUD AND
ALBERTO S. POVENTUD,
By ALBERTO S. POVENTUD,
Of Counsel, Attorneys for Plaintiffs.

I, Jose Rosario Gelpi, Clerk of the District Court for the Judicial District of Ponce, P. R., do hereby certify that the foregoing lis pendens notice is a true and faithful copy of the original complaint filed in the above-entitled cause on this date. And in order that it may so appear in legal form, and at the request of interested parties, I issue this certificate under my hand and the seal of this court, this eighth day of September, 1913.

JOSE ROSARIO GELPI,
Clerk of the District Court of Ponce, P. R.,
By B. SANCHEZ MONTALVO,
Deputy Clerk.

A memorandum of this document has been made by a note on the margin of entries 10, 9 and 9 of properties numbers 454 duplicate, 456 duplicate and 453 duplicate, at folios 141, 242 reverse and 24 of volumes 13, 10 and 11 of Naguabo, respectively.

Humacao, September 15, 1913.

MIGUEL PLANELLAS,
Registrar of Property.

The plaintiff offers in evidence a certificate issued on January 20, 1916, by the Registrar of Property of Humacao, Raul Benedicto, showing the records of this property since the hereditary right was first recorded in favor of plaintiffs, as well as of all subsequent records.

No objection was made by defendants to the document and it was admitted by the court and marked "Exhibit D" of the plaintiffs. The said document reads as follows:

To the Registrar of Property of Humacao, P. R.:

The undersigned, as attorney and verbal agent of the heirs of Manuel Gonzalez, requests you to issue copies of the records which appear in that Registry, to wit:

1. Of the 9th entry appearing at folio 140, reverse, of volume 13 of Naguabo, property No. 454, duplicate.

70 2. Of the 8th entry, at folio 241, reverse, volume 10 of Naguabo, property No. 456.

3. Of the 9th entry at folio 23, volume 11 of Naguabo, property No. 453, duplicate.

4. Of the 10th entry at folio 141, volume 10 of Naguabo, property No. 454, duplicate.

5. Of the 9th entry at folio 242, reverse, volume 10 of Naguabo, property No. 456, duplicate.

6. Of the 10th entry at folio 24, volume 11 of Naguabo, property No. 453, duplicate.

7. Of the 10th entry at folio 173, reverse, volume 13 of Naguabo, property No. 456, triplicate.

8. Of the subsequent entries made in relation to the said properties 456, triplicate, except the sale made by Benitez of said property, also excepting the entries made by the new purchaser.

9. Of the entries made with respect to the deed of June 7, 1913, made before notary Francisco Gonzalez in favor of Diego Garcia Ortega in relation to the described properties or to some of them.

This petition does not cover the entries made in favor of the purchasers or parties acquiring subsequently to the recording of the complaint in the action brought in the District Court of Ponce by Aristides Gonzalez Lugo et al. vs. Jose J. Benitez et al.

Yours truly,

ARTURO APONTE, JR.

January 14, 1916.

I, Raul Benedicto Geigel, Registrar of Property of Humacao, P. R., hereby certify:

First. That at folio 54 of volume 9 of Naguabo appears property No. 454, the description of which according to its first and eleventh records is as follows:

Rural Property called "Los Puentes," situated in the ward of Rio Abajo of the municipal district of Naguabo, place known as "Boca Prieta," consisting of 36.223 cuerdas, equivalent to 14 hectares, 23 ares, 41 centares, bounded on the four cardinal points by lands of Francisco Buso, now of Jose J. Benitez.

71 The 9th record of this property at folio 140, reverse, volume 13 of Naguabo, reads as follows:

9th. Rural property called "Los Puentes" which is described in the foregoing first and second records the same as in the document presented.

It appears subject to a mortgage, together with two other properties, in favor of the Attorney General of this Island for the sum of five thousand dollars, according to the foregoing 7th record, and to a lis pendens notice of Maria Rios, widow of Rubio, according to a note on the margin of the second record. This property appears recorded in favor of Manuel Gonzalez Fernandez by purchase from Santiago R. Palmer and his wife, according to the foregoing eighth record. The said Manuel Gonzalez, former resident of Rio Grande, died at Mameyes Segundo of that Municipality on the 19th day of March, 1904, leaving a will made on the 17th of the said month and year before notary Santiago R. Palmer, wherein, after providing for the appointment of executors and a partitioner and making a declaration of his property, he designated as his sole and universal heirs in equal shares his six children born of his only marriage with Clementina Lugo Calzada and named, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo, and his said wife, Lugo Calzada, as to the part allowed her by law, and also stated that all the properties belong to conjugal partnership, including this property as to which this record is sought pro indiviso in the name of said succession of Gonzalez and in the terms appearing in the eighth record, 452 duplicate, at folio 19, volume 11 of Naguabo. Wherefore Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel Carlota and Clementina Gonzalez y Lugo record this property in their favor and pro indiviso by title of testate inheritance. In one of the documents are included several other properties which appear at the place mentioned in the marginal note. The presentation of the documents and other facts appear from the record, to which I refer. Humacao, June 12, 1908. Fees, No. 5, charges \$4.50 paid in 1 of \$3; 1 of \$1, and 1 of \$0.50. J. M. Cuadra.

I also certify that the 10th record of the same property No. 454, duplicate at folio 41, volume 13 of Naguabo, reads as follows:

10. Rural property called "Los Puentes" and described in its foregoing first and second records the same as in the document presented. It is subject to such encumbrances and liens as are indicated in its foregoing records and annotations. This property is recorded in the names of Clementina Lugo Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo as undivided and by inheritance from Manuel Gonzalez Fernandez as appears from its foregoing ninth record. Clementina Lugo y Calzada, in her own right and in the names of her minor daughters, after having been previously authorized by the District Court of San Juan; Maria and Manuela Gonzalez y Lugo being the minor daughters of Clementina Lugo y Calzada; Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, all residents of Rio Grande, sold to Jose J. Benitez Diaz, a resident of Vieques, this property and two others, all for the sum of seventeen thousand and six hundred dollars, no separate mention having been made as to the price or value of each property as more fully appears from the record number 9 of property 456, duplicate, at folio 242, reverse, volume 10 of this municipality. Wherefore, Jose J. Benitez Diaz records in his favor the property of this number by purchase title. The document includes two other properties already recorded as indicated in the marginal note. All the foregoing appears from the copy of the deed executed in San Juan before notary Antonio de Aldrey Montolio and from a certificate issued by the clerk of the District Court of San Juan and signed by A. Marin Marien, deputy clerk of that court, the presentation of which and other facts appear from said record, to which I refer.

Humacao, June 18, 1908. Fees No. 5, charges \$7.00 paid in a stamp of \$5.00 and 3 of \$1, each. J. M. Cuadra.

And I further certify that the record last quoted has been cancelled by the following number of eleven made at folio 142 of said volume 13 of Naguabo, which I copy below in accordance with section 292 of the Mortgage Law:

11. Rural property or farm called "Los Puentes" and described in its foregoing first record the same as in the document presented with the difference that in this it is stated that its boundaries on the four cardinal points by lands of Francisco Busco are now those of Jose J. Benitez Diaz. It and two other properties are subject to a

73 mortgage of five thousand dollars in favor of the Attorney General as representative of The People of Porto Rico, according to the foregoing seventh record; to a lis pendens notice recorded by Maria Rios widow of Rubio against the succession of Manuela Guzman and others, according to a note at the margin of the foregoing second record, and to another notice of a suit filed by Aristides Gonzalez y Lugo, in his own right and as guardian ad litem of the minors Manuel, Carlota and Clementina Gonzalez y Lugo, against Jose J. Benitez et al., as appears from a marginal note on the foregoing tenth record; but, as recited in the document presented, it is only subject to the last lien mentioned. Jose J. Benitez Diaz has this property recorded in his name, which he

acquired by purchase from the succession of Manuel Gonzalez, as appears from the foregoing tenth record, and by virtue of that title Jose J. Benitez Diaz, a resident of Vieques, for himself and as attorney in fact of his wife, Carlota Sampayo Guzman, sold this property and two others by a deed executed in Humacao on September 2, 1914, before notary Francisco Gonzalez Fagundo to Manuel Rodriguez Gonzalez, single, Jose R. Fuertes, married to Mercedes Garzot, and Faustino R. Fuertes, Jr., married to Carmen Garzot, residents of Naguabo, for the sum of forty-two thousand, five hundred dollars, payable in the following manner: eight thousand dollars at the time of the execution of the deed, which the vendor received and for which he gave receipt; nine thousand, five hundred dollars within the period of time from this date (date of said deed) to September 30, 1914, secured by a promissory note duly endorsed, and twenty-five thousand dollars which the purchasers reserve to satisfy at the proper time the mortgages existing on the other properties sold and of which total sum, distributed for the purposes of the Registry, this property is charged with the sum of one thousand and eighty-six dollars and sixty-nine cents, or thirty dollars per acre, under the conditions which appear from the fifteenth record of property number 136, quadruplicate, at folio 127, reverse, volume 11 of Naguabo. Wherefore, Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr., record in their names in equal parts the property of this number by title of purchase. The other two properties are where the marginal note recites. The presentation of the document and other facts appear from the said record, to which I refer.

Humacao, April 27, 1915. Fees No. 5, charges, \$4.50. Planellas.

Second. That property number 456 appears at folio 64 of volume 9 of Naguabo and its description, according to its first, second, and twelfth records is as follows:

"Rural Property: Islet called 'Quinones' in the ward of Rio Abajo of the Municipal District of Naguabo, composed of 88.95 acres, equivalent to 34 hectares, 96 ares and 9 centares; bounded on the north by Rio Viejo which separates it from lands of Manuela Gutman and Santiago R. Palmer and by the Cercado Torres of Petronila Patricia Rios; on the east by lands of the succession of Ramon Argueso and of Carmen Fuertes; on the south by the river Blanco of Naguabo which separates it from lands of Jose Rios y Berrios, and on the west by the same river, the farm 'Mulas' and the Cercado Torres."

That the eighth record of this property at folio 241, reverse, volume 10 of Naguabo, reads as follows:

8. Rural property called "Islote Quinones" and described in its foregoing first and second records in same way as in the document presented. It is subject to an annotation of a complaint filed in the District Court of this city by Maria Rios, widow of Rubio, against the succession of Manuela Gutman, et al., as appears from the note at the

margin of said second record, and to an attachment in favor of Frank Antonsanti y Capo which was denied as shown in the foregoing annotation letter "A". This property appears to have been recorded in the name of Manuel Gonzalez Fernandez by purchase from Santiago R. Palmer and his wife, Catalina Romaguera, as shown by its foregoing seventh record. The said Manuel Gonzalez y Fernandez, who was a resident of Rio Grande, died on August 19, 1904, leaving a will made on the 17th of the said month and year, by virtue of which and among other dispositions he designated as his sole and universal heirs in equal parts his children born of his only marriage with Clementina Lugo Calzada and named Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo and his said wife, Clementina Lugo y Calzada, in that portion allowed her by law, and

also stated that all of the property belongs to the conjugal partnership, including this property with respect to which and according to a written petition record thereof is sought pro indiviso in favor of the persons composing the said succession of Gonzalez, in the terms specifically mentioned in the record number eight of property No. 452 duplicate, at folio 19, volume 11 of Naguabo. Wherefore, Clementina Lugo y Calzada and her children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, who form the succession of Manuel Gonzalez, record in their names the undivided ownership in the property of this number by title of inheritance. In one of the documents presented are included five other properties which are recorded where it is indicated in the marginal note. The presentation and other facts appear from the record mentioned, to which I refer.

Humacao, June 12, 1908. Fees No. 5, charges \$5 paid in one stamp of \$5 and one of 50 cents. J. M. Cuadra.

That the ninth record of the said property number 456, duplicate, at folio 242, reverse, of said volume 10 of Naguabo, reads as follows:

9. Rural property called "Islote Quinones" and described in its foregoing first and second records the same as in the document presented. It is subject to such encumbrances and liens as appear from its former records. This property figures as recorded pro indiviso in the name of the succession of Manuel Gonzalez y Fernandez, which succession is composed of Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, as shown by the foregoing eighth record. The said Clementina Lugo y Calzada, widow, property owner, fifty years of age and a resident of Rio Grande, in her own right and as mother with patria potestas over her minor unemancipated children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, and with authorization granted by the District Court of San Juan by its order of May 27, last; Maria Gonzalez Lugo, a resident of Rio Grande, and Manuela Gonzalez y Lugo, married, property owner, twenty-one years of age and also a resident of Rio Grande, sell this property and two others which they acquired by inheritance from Manuel Gonzales Fernandez, together with other properties, to Jose J. Benitez Diaz, a

property owner, forty-two years of age, married to Carlota Sampayo y Guzman and a resident of Vieques, for the lump sum of seventeen thousand, six hundred dollars, without making any separate
76 mention of the value of each property, the vendors acknowledging that they received the said sum prior to the execution of the deed to their entire satisfaction and warranting the title. Wherefore, Jose J. Benitez Diaz records in his name the ownership of the property of this number by title of purchase. All of the foregoing appears from a copy of the deed executed in San Juan on June 5, 1908, before Notary Antonio de Aldrey Montolio and from a certificate issued by A. Marin Marien, deputy clerk of the District Court of San Juan, in which is included the order of the court referred to in the record authorizing the sale of this property and others, the said documents having been jointly presented in the fifteenth volume of the Journal, at 1.30 p. m. of yesterday, as shown by the entry of presentation number 28 entered at folio 9th, reverse. And the aforesaid agreeing with the Registry and the documents presented, and pointing out that these two properties to which this record refers are recorded where the marginal note indicates, I subscribe this at Humacao this eighteenth day of June, 1908.

Fees No. 5, charges, \$10, paid in two internal revenue stamps of \$5. J. M. Cuadra.

That the tenth entry of the said property number 456, triplicate, at folio 74, 173 reverse, of volume 13 of Naguabo, reads as follows:

10. Rural property called "Islote Quinones" and described in its foregoing first and second records in the same manner as in the document presented. It is subject to no liens. Jose J. Benitez, property owner, married, forty-three years of age and a resident of Vieques, has this property recorded in his name by purchase from Clementina Lugo y Calzada and her children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, as shown by the foregoing ninth record, and by virtue of such title Benitez Diaz, in his own right and as attorney in fact of his wife, Carlota Sampayo y Guzman, thirty-four years of age, property owner and a resident of Vieques, whose capacity has been duly shown in this Registry, leases the said property to Prudencio Eugui y Barriola, a property holder, thirty-four years old, married to Dolores Borges and a resident of Gurabo, for a period of ten years from February 15, last, its effectiveness being retroactive to that date and to terminate on February 15,
77 1920, the said Prudencio Eugui y Barriola having the option to extend it for three or four months more after previously notifying the lessor. The rent shall be two thousand dollars per annum, payable half-yearly in advance, the lessee being entitled to cultivate the property as he may desire and the parties further stipulate that any improvements made on the property shall remain for the benefit of the lessor. They likewise agree that no servitude shall be imposed by the lessee on the property, but if such should be established he will be bound to raise it at the conclusion of the contract and at his expense and risk. The said Eugui y Barriola is

authorized to sub-lease the property wholly or in part, he being responsible to the lessor for the performance of the contract. Prudencio Eugui also binds himself to have this contract secured by Manuel Antonio Barriola in favor of the lessor. Wherefore, Prudencio Eugui y Barriola records his right as to the lease upon this property as aforesaid. The foregoing appears from a copy of a deed executed in San Juan on the 18th of March, instant, before notary Antonio de Aldrey, which was presented in the Registry yesterday at ten o'clock, as shown by entry 372, at folio 126, volume 16 of the Journal. And the foregoing agreeing with the Registry and documents cited, I issue this in Humacao on the 31st day of March, 1910.

Fees No. 5, charges, \$18, paid in one stamp of \$5, 1 of \$10, and 1 of \$3. Miguel Planellas.

That the eleventh record of said property number 456, triplicate, at folio 174 of said volume 13 of Naguabo, reads as follows:

11. Rural property called "Islote Quinones" and described in its foregoing first and second records the same as in the document presented. It appears subject to a contract of lease in favor of Prudencio Eugui y Barriola for a period of ten years as shown by the foregoing tenth record; Jose J. Benitez Diaz, a resident of Vieques, forty-seven years of age, married, property owner, has this property recorded in his name as acquired by purchase from the succession of Gonzalez, as appears from the foregoing ninth record, and by virtue of that title the said Jose J. Benitez Diaz, in his own right and as attorney in fact of his lawful wife, Carlota Sampayo, the latter a property owner, of age and whose capacity she has already shown in this Registry, create a first special and voluntary mortgage on this and another property in favor of Diego Garcia Ortega, a resident of Rio Piedras, property owner, of age and married to Genoveva Andino Solar, represented by her attorney in fact Francisco Robledo Garcia, unmarried, property owner, thirty-eight years old and a resident of Rio Piedras, the said mortgage being to secure a loan made to him by said Garcia Ortega in the sum of fifteen thousand dollars, which sum the debtor Benitez shall return in the town of Rio Piedras on June 7, 1915, and the said sum to bear interest at the rate of 12 per cent per annum and to be paid quarterly as it becomes due; it being understood that besides the sum of fifteen thousand dollars and the interest amounting to three thousand six hundred dollars, the aforesaid mortgage shall secure also an additional sum of fifteen hundred dollars for costs, expenses and attorney's fees in case of foreclosure. This property will be held subject to the payment of ten thousand dollars as principal, one thousand and one hundred dollars as interest and fifty dollars for costs and attorney's fees. The parties stipulate that if the debtors shall fail to pay the interest for two consecutive quarters the debt will become due and the creditor may proceed to recover it either by an amicable settlement or by resort to the courts. The parties further agree that Benitez may pay the whole debt, or a part thereof,

before it becomes due, provided that he notifies the creditor a month in advance and pays as a reparation two per cent on the sum he pays. Wherefore Diego Garcia Ortega records in his name his mortgage lien on this property. The document also includes another record which appears as stated in the marginal note. The aforesaid appears from a copy of the deed executed on June 7, 1913, before notary Francisco Gonzalez Fagundo of Humacao which was presented at this Registry at 9 o'clock a. m., of the 15th instant, as shown by entry No. 661, at folio 279, reverse, volume 19 of Journal. And it being in conformity with the Registry and document referred to, I sign this at Humacao, this 19th day of July, 1913.

Fees No. 5, charges, \$14.00. Miguel Planellas.

I further certify that the ninth record of said property number 546, previously transcribed, has become extinguished by the 79 12th record of said property at folio 176, volume 13 of Naguabo, a copy of which I insert below in accordance with section 292 of the Mortgage Law:

12. Rural property called "Islote Quinones" and described in its foregoing first and second records the same as in the document presented, it being stated therein that besides Rio Viejo it is bounded on the north by lands of Santiago R. Palmer and of the Cereado Torres, now Petronila Patricia Rios, and on the east by lands of Carmen Fuertes. It is subject to the following liens: a contract of lease in favor of Prudencio Eugui y Barriola for the term of ten years as per its foregoing 12th record; to a mortgage, together with another property, in favor of Diego Garcia Ortega for the sum of fifteen thousand dollars, with interest at the rate of 12 per cent per annum, this property being charged with the sum of ten thousand dollars as principal, one thousand and one hundred dollars as interest and seven hundred and fifty dollars for costs and attorney's fees, according to its foregoing eleventh record, and to a notice of a complaint filed by Aristides Gonzalez Lugo, in his own name and as guardian ad litem of the minors Manuel, Carlota and Clementina Gonzalez y Lugo, before the District Court of Ponce, wherein the nullity of several entries of this property and others is claimed, as shown by the marginal note of the foregoing ninth record. Jose J. Benitez Diaz has the property of this number recorded in his name as acquired by purchase from Clementina Lugo y Calzada and her children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, according to the foregoing ninth record, and by virtue of said title the said Jose J. Benitez, married, property owner, of age and a resident of San Juan, in his own name and as attorney in fact of his wife Carlota Sampayo Guzman, property owner, of age, whose capacity has been shown in this Registry, sells the property of this number to Cristina Alvarez Garriga, property owner, of age, and resident of Naguabo, represented by her agent and husband, Juan Noguerras Pedroza, of age, married, property owner and resident of Naguabo, for the sum of fourteen thousand dollars, of which the purchaser, Mrs. Alvarez Garriga, reserves the sum of ten thou-

sand dollars, the amount of the mortgage lien on the property, to make payment to the creditor, Diego Garcia Ortega, and the remaining four thousand dollars Noguera delivers to Benitez Diaz at the time of the execution of the deed in the presence of the notary and witnesses by a check drawn on Korber Company of San Juan, which Benitez receives as cash, the vendors warranting the title. Wherefore Cristina Alvarez y Garriga records in her name the property of this number by title of purchase. The aforesaid appears from a deed executed at Humacao on October 3, 1913, before notary Francisco Gonzalez Fagundo, which was presented in this Registry at 10.30 a. m., on October 6, 1913, as shown by entry number 146, folio 62, volume 20 of Journal. And it being in conformity with the Registry and the documents recited, I issue this at Humacao, this eleventh day of October, 1913.

Fees No. Sect. 5, \$14.00. Miguel Planellas.

And Third. That at folio 49, volume 9 of Naguabo, there appears property number 453, the description of which according to its first and second records, is as follows:

"Rural Property called 'Madama Duran' and situated in the place called 'Los Puentes' in the ward of Rio Abajo of the Municipal District of Naguabo, composed of 107.468 acres, equivalent to 42 hectares, 24 ares, and bounded on the north by Rio Blanco which separates it from the Cereado Ramirez of Manuela Gutman and part of the land of the succession of Ramon Argueso, formerly Pedro Lebron; on the east by part of said Rio Blanco which separates it from lands of Juan Buso; on the south by lands of said Buso, and on the west by lands of the succession of Ramon Argueso, formerly of Pedro Lebron."

That the ninth record of said property number 453, duplicate, at folio 23, volume 11 of Naguabo, reads as follows:

9. Rural property called "Madama Duran" and described in its foregoing first and second records the same as in the document presented. It and other properties are subject to a mortgage in favor of the Attorney General as per its foregoing seventh record; to a notice of a complaint filed by Maria Rios, widow of Rubio, against Victor Bursat, the succession of Manuela Gutman and others, as shown by a note on the margin of the second record, and to a cautionary notice for 120 days in favor of Frank Antonsanti y Capo, as per the foregoing letter "A". This property is recorded in the name of Manuel Gonzalez y Fernandez by purchase from Santiago R. Palmer and his wife, Catalina Romaguera, as shown by the foregoing eighth record. The said Manuel Gonzalez y Fernandez formerly a resident of Rio Grande, died in the ward of Mameyes Segundo of the said municipality on August 19, 1904, leaving a will made on the 17th of the said month and year before notary Santiago R. Palmer of San Juan wherein he declared that he was married to Clementina Lugo Calzada, of which marriage she bore

six children named Maria, Manuela, Aristides, Carlota, Manuel and Clementina Gonzalez y Lugo, all minors whom he designated as his sole and universal heirs in equal portions together with his said wife, Clementina Lugo, in that portion allowed her by law, and he also stated that all of the property belonged to the conjugal partnership, including the property of this number sought to be recorded in favor of said succession of Gonzalez in the terms and conditions which more fully appear in the ninth record of property 452, at folio 19 of said volume. Wherefore, Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo record pro indiviso in their names the property of this number by title of testate inheritance. One of the documents includes several other properties already recorded as indicated by the marginal note. The presentation of the documents and other facts are shown by said record, to which I refer.

Humacao, June 12, 1908. Fees No. 5, charges, \$7.50. Paid in one stamp of \$5, 2 of \$1 and 1 of 50 cts. J. M. Cuadra.

That the tenth record of said property number 453, duplicate, at folio 24, volume 11 of Naguabo, reads as follows:

10. Rural property called "Madama Duran" and described in its foregoing first and second records the same as in the document presented. It appears subject to a mortgage in favor of the Attorney General as per its foregoing seventh record and to a notice of a complaint filed in the District Court by Maria Rios, widow of Rubio, against the succession of Manuela Gutman and others, as shown by the note on the margin of the second record, and to a notice of an attachment in favor of Frank Antonisanti y Capo as shown by the foregoing entry letter "A". This property is recorded in the name of Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel,

82 Carlota and Clementina Gonzalez y Lugo by title of inheritance from their husband and father, respectively, Manuel Gonzalez Fernandez. The said Clementina Lugo y Calzada, in her own right and as mother with patria potestas over her minor children Aristides, Manuel, Carlota, and Clementina Gonzalez y Lugo, having been previously authorized by the District Court of San Juan, and Maria, Manuela Gonzalez y Lugo, all residents of Rio Grande, sold to Jose J. Benitez Diaz this property and two others, all for the sum of seventeen thousand and six hundred dollars, without making any special mention of the purchase price of each property, and in the terms which more fully appear in record number nine of property number 242, volume 10 of Naguabo. Wherefore, Jose J. Benitez Diaz records in his name the ownership of the property of this number by title of purchase. The document included two other properties which are recorded where it is indicated by the marginal note. All of the foregoing appears from a copy of the deed executed in San Juan on June 5th, instant, before notary Antonio de Aldrey Montolio and from a certificate signed by the deputy clerk of the San Juan Court, A. Marin Marien, wherein an order of the court authorizing the sale of several prop-

erties is included, the said documents having been presented in this Registry as shown by the said entry, to which I refer.

Humacao, June 18, 1908. Fees No. 5, charges \$7.50; paid in two stamps of \$3, one of \$1, and one of 50 cts. J. M. Cuadra.

That the eleventh record of said property number 453, triplicate, at folio 33 of volume 19 of Naguabo, reads as follows:

11. Rural property called "Madama Duran" and described in its foregoing first and second records the same as in the document presented. It is subject to a mortgage in favor of the Attorney General, as shown by the seventh record; to a notice of a complaint filed in the District Court by Maria Rios, widow of Rubio, against the succession of Manucla Gutman and others, according to a note on the margin of the second record, and to an attachment in favor of Frank Antonsanti Capo, as per the foregoing entry letter "A". Jose J. Benitez, married, and resident of Vieques, has this property recorded in his name as acquired by purchase from the succession of Manuel Gonzalez as appears from the foregoing tenth record;

and by virtue of the said title and as attorney in fact of his wife, Carlota Sampayo, also a resident of Vieques, he created a first special voluntary mortgage on this property and another by a deed executed on June 7, 1913, before notary Francisco Gonzalez Fagundo of Humacao to guarantee a loan made by Diego Garcia Ortega, resident of Rio Piedras, represented by his attorney in fact, Francisco Rolledo Garcia, single, a resident of said town, of fifteen thousand dollars, with interest at 12 per cent per annum, payable in quarterly instalments as it becomes due, the said mortgage securing also an additional sum of fifteen hundred dollars for costs, expenses and attorney's fees. This property is charged with the payment of five thousand dollars as principal, two thousand dollars as interest and seven hundred and fifty dollars for costs, all as it appears from record number 11 of property number 453, triplicate, folio 174, reverse, volume 13 of Naguabo. Wherefore, Diego Garcia Ortega records in his name his mortgage lien on this property. The document includes another record appearing as indicated in the marginal note. The presentation and other facts appear in the record, to which I refer.

Humacao, July 19, 1913. Fees No. 5, charges, \$8.50. Planellas.

And finally, I certify that the tenth record of said property No. 453 has become extinguished by the twelfth record thereof at folio 33, reverse, volume 19 of Naguabo, which I copy in accordance with section 292 of the Mortgage Law.

12. Rural property called "Madama Duran" and described in its foregoing first and second records the same as in the document presented. It and another property are subject to a mortgage in favor of the Attorney General of Porto Rico, as representative of The People of Porto Rico, for the sum of five thousand dollars for

the faithful performances of their duties as notaries public of Juan Hernandez Lopez and Rafael Lopez Landron, as shown by the foregoing seventh record; to a notice of a complaint filed by Maria Rios, widow of Rubio, against Victor Burset, the succession of Manuela Gutman and others, according to a note on the margin of the second record; to another notice of a complaint filed by Aristides Gonzalez Lugo, in his own name and as guardian ad litem of minors Manuel, Carlota, Clementina Gonzalez Lugo, against Jose J. Benitez

84 Diaz and others, as shown by a note on the margin of the tenth record, and, together with another property, to a mortgage for fifteen thousand dollars, with interest at 12¹/₂ per cent per annum, due on June 7, 1915, this property being responsible for the sum of five thousand dollars as principal, two thousand dollars as interest and seven hundred and fifty dollars for expenses, as shown from the foregoing eleventh record, although it appears from the document presented that it is subject only to the two last liens. Jose J. Benitez Diaz has recorded in his name the property of this number as acquired by purchase from the succession of Manuel Gonzalez, as appears from the foregoing tenth record and by virtue of said title the said Jose J. Benitez Diaz, a resident of Vieques, in his own right and as attorney in fact of his wife, Carlota Sampayo Guzman, and by deed executed in Humacao on September 2, 1914, before notary Francisco Fagundo, sold this property and two others to Manuel Rodriguez Gonzalez, single, Jose R. Fuertes, married to Mercedes Garzot, and Faustino R. Fuertes, Jr., married to Carmen Garzot, residents of Naguabo, in equal portions, all for the sum of forty-two thousand five hundred dollars, payable as follows: eight thousand dollars at the time of the execution of the deed, which sum Benitez received and for which he executed a release; nine thousand and five hundred dollars within the time from today (date of the deed) to September 30, 1914, secured by a promissory note duly endorsed, and twenty-five thousand dollars that the purchasers reserve to satisfy when due the mortgages on the said property and another, the total purchase price being distributed for the purposes of the Registry of Property charged this property with ten thousand, seven hundred and eighty six dollars and eighty cents; or one hundred dollars per acre, on the conditions which appear in the fifteenth record of property number 136, quadruplicate, folio 127, reverse, volume 11 of Naguabo. Wherefore, Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr., record in their names in equal parts the property of this number by title of purchase. The other two properties are recorded where indicated by the marginal note. The presentation of the document and other facts appear in the said record to which I refer.

Humacao, April 27, 1915. Fees No. 5, charges, \$10. Planellas.

85 It so appears from the registration books of this Registry of Property, and at the request of attorney Arturo Aponte, Jr., I issue this copy at Humacao at 3 o'clock, January 20, 1916.

RAUL BENEDICTO,
Registrar of Property.

Internal Revenue stamps for \$8.50 have been cancelled in compliance with number 6 of the Tariff.

Humacao, P. R., January 20, 1916.

The Registrar, RAUL BENEDICTO.

Plaintiff offers in evidence lease deed No. 26, executed by Jose J. Benitez Diaz in favor of Prudencio Eugui y Barriola on March 18, 1910, before notary Clpiano Valdes Cajas of Humacao, whereby Benitez Diaz leases the property herein mentioned as "Islote Quinones" and described in the complaint.

No objection is made by the defendants and the document is admitted by the court as "Exhibit E" of the plaintiff. It appears from the instrument that Jose J. Benitez Diaz and his wife Carlota Sampayo Guzman, on the 18th of March, 1910, leased to Prudencio Eugui y Barriola the property called "Islote Quinones" of 88.95 acres as described in the complaint, for the term of ten years from February 15, 1910, to February 15, 1920, the said term being subject to extension for three or four months more on previous notice to Jose Benitez Diaz, the rent to be two thousand dollars per annum, payable by semesters in advance, and the lessee having the right to cultivate the property in such manner as he may deem convenient, the improvements which he make in said property to remain in favor of lessor Benitez Diaz.

Plaintiffs offer in evidence a copy of deed No. 61, executed in the city of Humacao on August 24, 1912, by notary Manuel Tous Soto as partitioner of the estate of Manuel Gonzalez Fernandez, the minor represented by their guardian ad litem, joining in the deed.

No objection having — made by the defendants to the admission of said document, it was admitted by the court as "Exhibit F" of the plaintiffs.

The said instrument reads as follows:

Registration.

Number Sixty-One.

In the city of Humacao, Island of Porto Rico, August 24, 1912.

Before me, Manuel Tous Soto, a notary of this island with
86 residence in this city, appears Jose L. Pereyo Correa, fifty-one years old, married, a resident of this city and Clerk of the District Court of the Judicial District of Humacao. He appears in his said official capacity and having in my opinion the necessary legal capacity for this act, freely and voluntarily says: That by virtue of the order of the District Court of Humacao, of which he delivers to me a certified copy, entered in the ex-parte proceeding brought in the said court by Clementina Gonzalez, nee Lugo y Calzada, and others, regarding the approval of the liquidation, division and partition of the estate of Manuel Gonzalez y Fernandez made on the 21st instant by the partitioner Manuel Tous Soto, and accepted on the 22nd of the said month by the said Clementina Gonzalez and her children Maria Julia, Manuela Rodriguez and

Aristides Gonzales Lugo, of age, Manuel, Carlota and Clementina Gonzalez y Lugo, minors, and by their legal representative, Carlos F. Julia Davila and contained in the instrument which they signed on the same day the 22nd before the Justice of the Peace of Naguabo, a delivery of said documents is made to me so that together with the certified copy approving the said proceeding and the proofs consisting of certificates of records in the Civil Registry of the death of Manuel Gonzalez y Fernandez and of the birth of Manuel Gonzalez Lugo, a certificate of the non-appearance in the said registry of records of the births of Carlota and Clementina Gonzalez Lugo, baptismal certificate of the same, certificate of the will of Gonzalez Fernandez, certificate of the appointment of a legal representative of the minors interested in the said proceeding, copies of deeds number 240 of the protocol for 1904 and 60 of the protocol of 1902 of notary Santiago R. Palmer, No. 79 of the protocol of notary Juan Morera and a private instrument of sale, I protocol the same in this notarial office under my charge.

Therefore, I, the undersigned notary, protocol immediately after this instrument the said documents, certified copies and proofs which make 66 folios, following this deed of my current protocol, the first two being the copy of the order of approval, the 23 following the instrument of partition and the remaining forty-one, the proofs.

So it was stated, executed and signed, before witnesses Francisco Noya Frias and Federico Martinez Ochoa, of age, residents
87 of this city, whom I know and who have no legal impediment to act as such witnesses, the party and witnesses having previously read this deed themselves after having been informed of their right to read the same and examine the documents registered. Of all the foregoing, of my personal acquaintance with the party executing this instrument as well as (believing his statements) of his age, condition, profession, and residence, I, the notary, certify.

JESUS L. PEREYO.

M. TOS SOTO.

FRANCO. NOYA.

FREDERICO MARTINES.

(There is a paraph and mark.)

JUDICIAL DISTRICT OF HUMACAO, P. R.:

In the District Court.

No. —.

Ex Parte CLEMENTINA GONZALEZ, nee LUGO Y CALZADA, et al.,
Petitioners.

Approval of Partition Proceedings.

Order.

In view of the petition of Clementina Gonzalez, nee Lugo y Calzada, Maria Julia, nee Gonzalez Lugo, Manuela Rodriguez, nee

Gonzalez Lugo, Aristides Gonzalez Lugo, in their own rights and of Carlos Julia Davila as the legal representative of the minor over fourteen years old, Manuel, Carlota, and Clementina Gonzalez y Lugo, requesting the approval of the proceeding for the liquidation, division and partition of the ganancial society existing between the deceased Manuel Gonzalez y Fernandez and his wife, Clementina Gonzalez, nee Lugo Calzada, and for the liquidation, division and partition of the estate left by said deceased, made by attorney Manuel Tous Soto, as partitioner appointel by the petitioners, accepted by them and appearing in the document accompanying this motion wherein the approval of the court is prayed, with the proofs concerning the proceedings in the notarial office of Manuel Tous Soto in this city. The capital distributed amounts to \$58,011.00, the reductions from the ganancial society totalling \$30,585.83, the balance of \$27,425.17, constituting the ganancial property of which \$13,712.59 belongs to the widow Clementina Gonzalez as her inheritance, and \$2,285.43 to each of her children.

Whereas, all legal formalities have been observed in the said proceedings and there have been annexed to the documents duly showing the manner and proportion of the division of the ganancial society and the estate, the properties of greater value constituting the same being situated within this Judicial District.

Therefore, the said proceedings for the liquidation, division and partition of the ganancial society composed of Manuel Gonzalez Fernandez and Clementina Gonzalez, nee Lugo Calzada, are approved by the court, as well as those for the liquidation, division and partition of the estate left by the former made by the partitioner Manuel Tous Soto, accepted by the petitioners and contained in the document accompanying the petition, which shall be protocoled with the documents accompanying same in the notarial office in this city of Manuel Tous Soto, as prayed by the plaintiffs.

Done at Humacao, P. R., in open court, this 23rd day of August, A. D. 1912.

J. A. LOPEZ ACOSTA,
Judge of the Court.

Attest:
JESUS L. PEREYO,
Clerk.

I, Jesus L. Pereyo Correa, Clerk of the District Court for the Judicial District of Humacao, P. R., do hereby certify: That the foregoing is a true copy of the original as it appears from the record of the case in this office under my charge. And at the request of attorney Manuel Tous Soto, I issue this copy to which I affix the seal of the District Court of Humacao and sign, this 21st day of August, 1912.

[Seal of the District Court.]

JESUS L. PEREYO,
Clerk,
By JOSE M. PEREZ,
Deputy Clerk.

Partition of Inheritance.

In the city of Humacao on the 21st day of August, 1912, I, the undersigned Manuel Tous Soto having been appointed partitioner of the estate of the deceased Manuel Gonzalez y Fernandez by his widow, Clementina Gonzalez, nee Lugo y Calzada, her children of age, Maria, Julia, Manuela Rodriguez Cebollero and Aristides Gonzalez, and by Carlos F. Julia Davila as legal representative of the minor children of the deceased, Manuel, Carlota and Clementina Gonzalez, by virtue thereof, I proceed to make the liquidation and partition of said inheritance as follows:

89 **Civil Status and Succession.**—Manuel Gonzalez y Fernandez was born at San Miguel de Auler, of the Concejo de Navia, province of Oviedo, kingdom of Spain, the legitimate son of Domingo and Maria, residents of the town of Rio Grande, of this island of Porto Rico, domiciled at Mameyes, and married Clementina Lugo y Calzada at Luquillo on March 20, A. D., 1884, the following children having been born of that marriage and were living at the time of the death of said Gonzalez Fernandez, and now they and the widow reside on the town of Naguabo: Maria, married to Carlos J. Julia Davila; Manuela, married to Jose Rodriguez Cebollero, and Aristides, all of age; and the minors Manuel, born on October 17 A. D. 1892, Carlota, born April 29, 1895, and Clementina born April 15 A. D., 1898. (Exhibits Numbers 1, 2, 3 and 4.)

Death and Will.—Manuel Gonzalez y Fernandez died at his domicile in the town of Mameyes at five o'clock p. m. of the 19th of August, A. D. 1904, having made a will two days prior to his death by deed No. 256, which is in the protocol of notary Santiago R. Palmer of San Juan. (Exhibits Nos. 5 and 6.)

Hereditary Shares.—The estate of Manuel Gonzalez y Fernandez, deceased, should have been distributed among his widow and children in accordance with Section 7, Chapter 3, Title 3, Book 3, of the Revised Civil Code and sections 795, 796, but as the surviving spouse renounced the rights conferred upon her by said section 7 in favor of her children, the said distribution is controlled by the sections last quoted, each heir receiving one-sixth of the estate, and there being no betterments or legacies, there will be no division by thirds, but an immediate division will be made of the estate as a whole by sixths.

Assets.—It is set forth by Gonzalez Fernandez in the fourth clause of his will that there were no marriage contributions and therefore that the properties acquired shall be deemed ganancial and to said statement the parties interested in this partition add that the spouses did not acquire during their marriage any separate property. The ganancial property remained undivided under the administration of the widow and children, new properties were acquired with the profits and some of them were sold and while such profits and the

90 properties acquired with them cannot be considered as ganancial, as they are the common property of the widow and children of the deceased in the same proportion as the ganancial property left at his death, no distinction shall be made among those included in the genuine mass of property, they having the value assigned by common agreement by Mrs. Gonzalez the adult children and the legal representative of the minors.

Liabilities.—The liabilities of the common property on the personal expenses of the Gonzalez family and for the administration, preservation and cultivation of the property are as follows:

A financing credit in favor of Central San Cristobal, of Naguabo, made under a contract for cultivation and purchase and sale of sugar cane and financing as set forth in a deed of May 15, 1912, (\$13,000), thirteen thousand dollars.

A mortgage credit created in favor of Juan R. Garzot Romero for ten thousand dollars by a deed of June 27 1911, executed before notary Manuel Tous Soto, which together with the interest due amounts to eleven thousand, one hundred and fifty-eight dollars, fifty-eight cents.

A credit for financing in favor of Juan R. Garzot Romero for three thousand dollars created by a deed of June 27, 1911, to be found in the protocol of notary Manuel Tous Soto, which together with interest due amounts to three thousand, four hundred and thirteen dollars.

Another common credit of Garzot & Sons (\$1,928.49), one thousand nine hundred and twenty eight dollars, forty-nine cents.

A credit in favor of Jose Rodriguez Fuertes for six hundred and forty-five dollars, seventy-six cents, for taxes due on the inventoried capital and paid at the request of the heirs, \$685.66.

Another credit in favor of Jose Rodriguez Fuertes for four hundred dollars on a current account.

Another credit for three hundred dollars to cover expenses for surveying properties and court costs, \$400.00. Total, \$30,885.83.

Thirty thousand, eight hundred and eighty-five dollars and eighty-three cents.

There are no liabilities against the estate of the deceased.

*General Mass of Property.**"A." Live Stock.*

Twenty-three oxen of different colors, as follows:

1. Guinea,	Sixty dollars.....	\$60.00
2. Payaso,	" ".....	60.00
3. Aguila,	" ".....	60.00
4. Negro fino,	" ".....	60.00
5. Abanico,	" ".....	60.00
6. Pulga,	" ".....	60.00
7. Aguja,	" ".....	60.00
8. Estrella,	" ".....	60.00
9. Jobiar,	" ".....	60.00
10. Bandolero,	" ".....	60.00
11. Caramelo,	" ".....	60.00
12. Trovador,	" ".....	60.00
13. Farol,	" ".....	60.00
14. Pitirre,	" ".....	60.00
15. Perla,	" ".....	60.00
16. Satanas,	" ".....	60.00
17. Conejo,	" ".....	60.00
18. Sirena,	" ".....	60.00
19. Bandera,	" ".....	60.00
20. Carabina,	" ".....	60.00
21. Revolver,	" ".....	60.00
22. Mariposa,	" ".....	60.00
23. Zumbador,	" ".....	60.00

Three cows of the following values:

24. A yellow cow,	Fifty dollars.....	50.00
25. A dark-colored cow,	" ".....	50.00
26. An Indian cow,	" ".....	50.00
27. Six saddle and draft horses valued at three hundred and ninety dollars,	\$390.00.	

"B." Implements.

28. Various agricultural implements valued at one hundred and six dollars, \$106.00.

92 29. Two buggies valued at one hundred and twenty-five dollars, \$125.00.

"C." Real Property.

30. A Rural Property called "Islote" or "Islote Rivolta" consisting of 154.85 acres of first-class land, equivalent to 59 hectares. 96 ares, situated in the ward of Rio Abajo, Municipal District of Nag-

uabo, and bounded on the north by the arm of Rio Viejo which separates it from lands of Juan Garzot; on the east by the same arm of Rio Viejo which separates it from Cercado Ramirez of Santiago R. Palmer up to the confluence of this arm of the river with the Rio Blanco; on the south by the Rio Blanco which separates it from lands of the heirs of Pilar Ojea, and on the west by lands of Cristino Lebron and of the succession of Ramon Argueso from a bamboo tree on the margin of Rio Blanco to a place where a ditch meets with said arm of Rio Viejo, its value being twenty-one thousand and one hundred dollars, \$21,100.00.

31. A Rural Property called "Cercado Torres" or "Maizales" situated in the same place and consisting of 121.40 acres, or 47 hectares, 71 ares and 57 centares, bounded on the north and east by lands of Jesus L. Pereyo; on the south by lands of Petronila Patricia Rios y Gutman, and on the west by lands of Ramon Villamli and Marcelino Borges, its value being eleven thousand and three hundred dollars, seventy-one cents, \$11,312.71.

32. Rural Property known as "Cercado Maldonado" situated at same place as the other two properties and consisting of 35.190 acres, equivalent to thirteen hectares, seventy-six ares, and eleven centares, bounded on the north by lands of Jesus L. Pereyo; on the east by a brook separating it from lands of Jesus L. Pereyo and the Viejo river which separates it from the property called "Islote Quinones" and lands of the succession of Ramon Argueso; on the south by said Viejo river which separates it from property "Islote Quinones," and on the west by a brook on the property Cercado Torres formerly described, its value being three thousand, two hundred and twelve dollars, twenty-nine cents, \$3,202.29.

33. Urban Property or frame-house of one story roofed with galvanized iron and facing the road leading from Naguabo to Juncos, its value being one thousand five hundred dollars, \$1,500.00.

34. A Rural Property now called "Duplace" situated in the ward of Mameyes, municipal district of Rio Grande, of 49.73 acres, equivalent to 19 hectares, 58 ares, 78 centares, bounded on the north by the sea; on the east by the property "Carmelita" of Jorge Bird Leon; on the south by property "Picua" of Angel Garcia Veve, and on the west by lands of Dulowig Duplace, its value being eight hundred and five dollars and forty-one cents, \$805.41.

35. Another Rural Property without name situated in the same place and consisting of 265 acres, or 104 hectares, 25 ares and 43 centares, bounded on the north by the sea; on the south by lands of Francisco Bonano and Frederico Garcia; on the east by lands of the latter, and on the west by that of Rosendo Matiengo Cintron, its value being four thousand, five hundred and forty-four dollars, fifty-nine cents, \$4,544.59.

36. Another Rural Property of one hundred acres equivalent to 39 hectares, 30 ares, and 40 centares, situated in the ward of "Zarzal"

of the Municipal district of Rio Grande, bounded on the north by lands of the succession of Bonano; on the south by land of Juan Jose Rodriguez; on the east by land of the succession of Aureo Diaz, and on the west by other lands of the said succession of Aureo Diaz and of Juan Jose Rodriguez, its value being two thousand and five hundred dollars, \$2,500.00.

37. Another Rural Property consisting of 1.75 acres of pasture lands equivalent to 68 ares, 87 centares, situated in the ward of Mameyes Segundo, municipal district of Rio Grande, and bounded on the north by the road leading from Fajardo to Rio Grande; on the east by lands of Mercedes Tirado; on the south by the brook Aguas Corrientes, and on the west by the road leading to the mountain, its value being one thousand dollars, \$1,000.00.

The rural property last mentioned contains the following improvements:

38. A one-story frame house roofed with galvanized iron and facing north on the road from Fajardo to Rio Grande. It measures 36.50 feet in front, 65 feet on its right side, 16.50 on the rear and 29 feet on its left side, its value being one thousand and five hundred dollars, \$1,500.00.

39. A wooden building roofed with galvanized iron, used as a bakery and having an oven, facing the north and the road from Fajardo to Rio Grande, measuring 16.50 feet on its front and rear and 42 feet on its sides, its value being one thousand dollars, \$1,000.00.

40. Another wooden-house with roof and front the same as to the preceding and measuring 19.50 feet on its front, 44 feet on its right, 36.50 on its left and 12 feet on its rear, its value being four hundred dollars, \$400.00.

"D." Growing Crops.

A plantation of 239 acres of sugar cane in the properties situated in the municipal district of Naguabo, "Cercado Torres", "Cercado Maldonado" and "Islote Rivolta", valued at seven thousand dollars, \$7,000.00.

The property inventoried amounts to fifty-eight thousand and eleven dollars, \$58,011.00.

Synopsis of the Inventory.

Live stock	\$1,920.00
Implements	231.00
Real property	48,860.00
Growing crops	7,000.00
These amounts total	58,011.00

which is the total sum of the general mass of the property.

Remarks.—No specification has been made in the general body of the property of the persons from whom the properties were acquired.

the titles of acquisition and records thereof in the registry of property, as all this appears from the copies of the deeds which are attached to this document as a part thereof.

Liquidation of Ganancial Property.—The ganancial property of the legal society composed of the spouses Manuel Gonzales Fernandez and Clementina Gonzalez, née Lugo Calzada, is represented by the difference between the inventoried capital, which is fifty-eight thousand and eleven dollars, and the amount of the liabilities which is thirty thousand, five hundred and eighty-five dollars and 95 eighty-three cents, the balance being twenty-seven thousand, four hundred and twenty-five dollars and seventeen cents.

Division of Ganancial Property. The sum of twenty-seven thousand, four hundred and twenty-five dollars and seventeen cents, the ganancial property of the dissolved partnership, should be divided equally between the surviving spouse and the children of the deceased spouse; therefore thirteen thousand, seven hundred and twelve dollars and fifty-nine cents belongs to Clementina Gonzalez and thirteen thousand, seven hundred dollars and fifty-nine cents to the heirs of Manuel Gonzalez Fernandez.

Division of the Inheritance. According to the item "Hereditary Shares", the sum of thirteen thousand, seven hundred dollars and fifty-nine cents, which constitute the estate of Manuel Gonzalez y Fernandez, should be divided into six equal parts, each of his six children being entitled to a share of two thousand, two hundred and eighty-five dollars and forty-three cents.

Allotments. For the payment of reductions, ganancial property of the widow and the hereditary shares of the children of Manuel Gonzalez y Fernandez, the following schedules are made:

Schedule of Reductions. Debts of the conjugal society after dissolution, \$30,585.83. For the payment of this sum, inasmuch as the minors' shares shall be paid in real property and there is not sufficient personal property to pay the reductions, the following properties are allotted to Clementina Gonzalez, née Lugo Calzada:

1st. The property Isote Rivolta which is described in No. 30 of the general body of properties, valued at twenty-one thousand and one hundred dollars, \$21,100.00.

2nd. The property "Cercado Torres", described in No. 31 of said general body of properties, valued at eleven thousand, three hundred and seven dollars and seventy-one cents, \$11,307.71.

Both items totalling thirty-two thousand, four hundred and seven dollars and seventy-one cents, \$32,407.71, which exceeds the amount of the reductions, or thirty thousand five hundred and eighty-five dollars and eighty-three cents, by the sum of one thousand, eight hundred and twenty-one dollars and eighty-eight cents, which is to be considered in the schedule for the payment of ganancial property.

96 Schedule of Clementina Gonzalez, née Lugo Calzada. The widow, Clementina Gonzalez, née Lugo y Calzada, for her share of one-half of ganancial property of her marriage with Manuel

Gonzalez Fernandez, shall have thirteen thousand, seven hundred and twelve dollars and fifty-nine cents, \$13,712.59.

For the payment of the said share the following property is allotted to her:

1st. The sum of (\$1,821.88) one thousand, eight hundred and twenty-one dollars and eighty-eight cents, which is the surplus of the allotment for the payment of the reductions, in the properties "Islote Rivolta" and "Cercado Torres", Nos. 30 and 31 of the general mass of property.	
2nd. Twenty-three oxen inventoried in Nos. 1 to 23 inclusive of the general mass of property and valued at sixty dollars each, one thousand, three hundred and sixty dollars	\$1,360.00
3rd. The three cows inventoried in Nos. 24, 25, and 26 of the general mass of property and valued at fifty dollars each	150.00
4th. The six saddle and draft horses inventoried in the general mass of property under No. 27 and valued at two hundred and ninety dollars	390.00
5th. The implements and accessories inventoried under No. 28 of the general mass of property and valued at one hundred and six dollars	106.00
6th. The two buggies inventoried under No. 29 of the general mass of property and valued at one hundred and twenty-five dollars	125.00
7th. The rural property called "Cercado Maldonado" inventoried under No. 32 of the general mass of property and valued at three thousand, two hundred dollars and twenty-nine cents	3,200.29
8th. The urban property of the "Cercado Maldonado" property, inventoried under No. 33 of the general mass of property and valued at one thousand, five hundred dollars	1,500.00
9th. The rural property called "Zarzal", inventoried under No. 36 of the general mass of property and valued at two thousand, five hundred dollars	2,500.00
97	
10th. The rural property in "Mamey" ward, described under No. 37 of the general mass of the property and valued at one thousand dollars	1,000.00
11th. The bakery building described under No. 31 of the general mass of property and valued at one thousand dollars	1,000.00

12th. The small house described under No. 40 of the general mass of property and valued at four hundred dollars	400.00
13th. A share of \$137.42 in the cane planted inventoried under No. 41 of the general mass of property and valued at \$7,000, leaving for other allotments the sum of \$6,862.58	137.42
Total	\$13,712.59

thirteen thousand, seven hundred and twelve dollars and fifty-nine cents, which constitutes the share of Clementina Gonzalez, née Lugo y Calzada, in the ganancial property and accepted by her in payment.

Schedule of Maria Julia, née Gonzalez Lugo. The share of this heir for her part in the estate of Manuel Gonzalez Fernandez is the sum of two thousand, two hundred and eighty-five dollars and forty-three cents.

For its payment she is allot-ed a share of two thousand, two hundred and eighty-five dollars and forty-three cents in the residue of the sugar-cane plantation inventoried under No. 41 of the general mass of the property, and this heir being thus paid, the said residue is reduced to the sum of four thousand, five hundred and sixty-seven dollars and fifteen cents.

Schedule of Manuela Rodriguez Cebollero, nee Gonzalez Lugo. The share of this heir in the estate of Manuel Gonzalez Fernandez is two thousand, two hundred and eighty-five dollars and forty-three cents.

For its payment she is allot-ed a share of two thousand, two hundred and eighty-five dollars and forty-three cents in the residue of the total value of the sugar-cane plantation inventoried under No. 41 of the general mass of the property, and this heir being thus paid, the residue is reduced to the sum of two thousand, two hundred and ninety-one dollars and seventy-two cents, \$2,285.43.

Schedule of Aristides Gonzalez Lugo. The share of this heir in the estate of Manuel Gonzalez Fernandez is two thousand, two hundred and eighty-five dollars and forty-three cents, \$2,285.43.

For its payment he is allotted a share of two thousand, two hundred and eighty-five dollars and forty-three cents in the residue of the value of the sugar-cane plantation inventoried under No. 41 of the general mass of the property, and this heir being thus paid, the residue is reduced to the sum of six dollars and twenty-nine cents.

Schedule of Manuel Gonzalez Lugo. The share of this heir in the estate of Manuel Gonzalez y Fernandez is two thousand, two hundred and eighty-five dollars and forty-three cents, \$2,285.43.

For its payment the following properties are allotted him: A share of two dollars and nine cents in the residue of the total value of the sugar-cane plantation inventoried under No. 41 of the

general mass of the property, the residue of which is now reduced to four dollars and twenty cents, \$2.09.

2nd. An undivided interest of two hundred and seventy-eight dollars and forty-seven cents in common with his sisters Carlota and Clementina in the total value of eight hundred and five dollars and forty-one cents in the property called "Duplace" and described under No. 34 of the general mass of property, two hundred and sixty-eight dollars and forty-seven cents, \$268.47.

3rd. An undivided interest of five hundred and fourteen dollars and eighty-seven cents in common with his sisters Carlota and Clementina in the total value of two thousand and five hundred dollars of the property situated in "Mamey" ward and described under No. 35 of the general mass of the property, \$1,514.37.

4th. An undivided interest of five hundred dollars in common with his sisters Carlota and Clementina in the total value of one thousand and five hundred dollars in the urban property situated in the ward of "Mameyes" and described under No. 38 of the general mass of the property, \$500.00.

The sums allot-ed amount to \$2,285.43; the said heir being thus paid her share of the estate.

Schedule of Carlota Gonzalez Lugo. The share of this heir in the estate of Manuel Gonzalez y Fernandez is two thousand, two hundred and eighty-five dollars and forty-three cents.

99 For its payment the following property is allotted to her:

1st. An undivided interest of two dollars and ten cents in the residue of the total value of the sugar-cane plantation inventoried under No. 41 of the general mass of the property, \$2.10.

2nd. An undivided interest of two hundred and sixty-eight dollars and forty-seven cents, in common with her brother Manuel and sister Clementina in the total value of eight hundred and five dollars and forty-one cents of the property called "Duplace" described under No. 34 of the general mass of the property, \$268.47.

3rd. An undivided interest of one thousand five hundred and fourteen dollars and eighty-six cents in common with her brother Manuel and sister Clementina in the total value of two thousand and five hundred dollars of the property situated in the ward of Mameyes and described in No. 35 of the general mass of the property, \$1,514.87.

4th. An undivided interest of five hundred dollars in common with her brother Manuel and sister Clementina in the total value of one thousand, five hundred dollars in the urban property situated in the ward of Mameyes and described under No. 38 of the general mass of the property, \$500.00. The sums allotted amount to two thousand, two hundred and eighty-five dollars and forty-three cents, \$2,285.43, the said heir being thus paid her share of the estate.

Schedule of Clementina Gonzalez Lugo. The share of this heir in the estate of Manuel Gonzalez y Fernandez is two thousand, two hundred and eighty-five dollars and forty-three cents, \$2,285.43.

For its payment the following properties are allotted to her: 1. Two dollars and ten cents of the residue of the sugar-cane plantation inventoried under No. 41 of the general mass of the property, \$2.10.

2. An undivided interest of two hundred and sixty-eight dollars and forty-seven cents in common with her brother Manuel and sister Carlota in the total value of eight hundred and five dollars and forty-one cents in the property called "Duplace" described under No. 34 of the general mass of the property, \$268.47.

3. An undivided interest of one thousand, five hundred and fourteen dollars and eighty-six cents in common with her brother Manuel and sister Carlota in the total value of two thousand and five hundred dollars in the property situated in the ward of Mameyes and described under No. 35 of the general mass of the property, \$1,514.86.

4. An undivided interest of five hundred dollars in common with her brother Manuel and sister Carlota in the total value of one thousand and five hundred dollars in the urban property situated in the ward of Mameyes and described under No. 38 of the general mass of the property, \$500.00.

The allotments amount to two thousand, two hundred and eighty-five dollars and forty-three cents, \$2,285.43; the said heir being thus paid her share of the estate.

Verification.—The allotments to Clementina Gonzalez total:

For payment of reductions.....	\$32,407.71
For payment of gananciales.....	13,712.59
The allotment to Maria Julia amounts to.....	2,285.43
“ “ “ Manuela Rodriguez amounts to....	2,285.43
“ “ “ Aristides Gonzalez amounts to.....	2,285.43
“ “ “ Manuel Gonzalez amounts to.....	2,285.43
“ “ “ Carlota Gonzalez amounts to.....	2,285.43
“ “ “ Clementina Gonzalez amounts to...	2,285.43

Verified sum, fifty-eight thousand and eleven dollars, which is the value of the inventoried and partitioned property.

Agreement Forming Part of this Partition.—1st. Should there appear any other property of the conjugal partnership or of the estate liquidated in this instrument, it shall be divided among the interested parties in the same proportion and in the same manner considering the unpaid reductions that may appear against the said legal society and estate.

2nd. The assignees are bound among themselves to warrant the properties allotted to them in this partition.

The division and liquidation of the conjugal society composed of Manuel Gonzalez y Fernandez and Clementina Gonzalez, nee Lugo y Galzada, and the liquidation and division of the estate of said Manuel Gonzalez Fernandez are made in these terms.

M. TOUS SOTO.

Ratification.

We, Clementina Gonzalez, nee Lugo y Calzada, Maria Julia, nee Gonzalez Lugo, Manuela Rodriguez, nee Gonzalez Lugo, and
101 Aristides Gonzalez Lugo, of age, property owners, residents of Naguabo, the first a widow and the others married, in our own rights, and Carlos F. Julia Davila, of age, property owner, representing the minors over fourteen years, Manuel, Carlota and Clementina Gonzalez Lugo, single, students and residents of Naguabo, as their legal representative, do hereby declare that we are advised of the liquidation and partition of the ganancial society once formed by Manuel Gonzalez y Fernandez and Clementina Gonzalez, nee Lugo y Calzada, and of the liquidation and division made by the partitioner by us appointed, Manuel Tous Soto; that we accept and ratify the said acts in all their parts and that the liquidation and division of said society and estate be considered valid, having accepted in payment of our respective shares the allotments made to us, for which we mutually give receipts, and that the instrument containing said acts of liquidation and division when approved by the District Court of Humacao be protocolled with its vouchers, title deeds to the properties inventoried in the notarial office of Manuel Tous Soto in this city. In witness whereof we sign this writing in Naguabo, this 23rd day of August, 1912.

CLEMENTINA LUGO,

Widow of Gonzalez.

MANUELA G. DE RODRIGUEZ.

MARIA G. DE JULIA.

ARISTIDES GONZALEZ.

MANUEL GONZALEZ.

CARLOTA GONZALEZ.

CLEMENTINA GONZALEZ.

CARLOS F. JULIA.

Sworn to and signed before me by Clementina Lugo widow of Gonzalez, of age, a resident of this town and widow; by Maria Gonzalez de Julia, married, of age; Manuela Gonzalez de Rodriguez, of age, married; Aristides Gonzalez Lugo, of age, married; Manuel Gonzalez Lugo, twenty years of age and single; Carlota Gonzalez, seventeen years of age, and Clementina Gonzalez, fourteen years of age, and Carlos F. Julia, married, of age; all being residents of this town, property owners, whom — personally know.

Naguabo, P. R., August 22, 1912.

A. DEL RIVERO QUINONES,

Justice of the Peace of Naguabo, No. 387.

102 (There is an internal revenue stamp of 25 cents, cancelled with the initials A. R. C. of date of August 22, 1912.)

Death of Manuel.

Municipality of Rio Grande, P. R.,

Office of the Secretary.

I, Luis Sanchez Vahamonde, Secretary of the Municipality of Rio Grande, P. R., and in charge of the Civil Registry thereof, do hereby certify that at folio 390 of Book 12 of the registry of deaths kept in this Civil Registry, there is an entry which reads:

Registration of Death. No. 214. Manuel Gonzalez y Fernandez. White. In the town of Rio Grande, at 9 a m., of August 20, 1904, before Arturo La Cruz Sanjurjo, Municipal Secretary, appeared Alfredo La Cruz Sanjurjo, born in San Juan and a resident of this town, 31 years of age, married, druggist, who stated that Manuel Gonzalez Fernandez, a native of Spain, resident of this town, domiciled at Mameyes Segundo, 46 years old, married, property owner, died at five o'clock, p. m., yesterday of remittent billious fever according to a certificate of the doctor which was presented to obtain a permit for his burial. In view of the said statement and of the doctor's certificate an order was made by the Secretary for the issuance of this entry of death, wherein there are set forth, besides the foregoing and in view of other data obtainable, the following facts: That at the time of his death the deceased was married to Clementina Lugo and leaves six children named Maria, Manuela, Aristides, Carlota, Manuel and Clementina; that he was an illegitimate son of Domingo Gonzalez, a native of Spain, widower, domiciled in Spain, and of Maria Fernandez, deceased; that his remains will be buried in the cemetery of Luquillo. It is likewise made to appear that he executed a will. The witnesses were Manuel Pimentel, of Rio Grande, married, forty-six years of age and property owner, and Francisco A. Torres, of Naguabo, married, forty-five years of age and property owner. This instrument having been read by all persons subscribing it, the seal of the Municipality was thereto affixed and it was signed by the Secretary, the affiant and the witnesses.

ARTURO DE LA CRUZ.

ALFREDO DE LA CRUZ.

MANUEL PIMENTEL.
FRANCISCO A. TORRES.

(There is a seal.)

103 The foregoing is a correct and true copy of its original.

In testimony whereof and at the request of attorney Manuel Tous Soto, I issue this copy in Rio Grande, this 23rd day of May, 1912.

LUIS VAHAMONDE.

Municipal Secretary in Charge of the Civil Registry.

(There is a seal as follows: Office of Municipal Secretary of Rio Grande, P. R. Fees \$0.40.)

Birth of Manuel.

I, Jose Castellon Gonzalez, Secretary of the Municipality of Vieques, P. R., and in charge of the Civil Registry, do hereby certify that at folios 432 to 433, volume four, birth section of the Civil Registry, the following entry appears:

No. 532. Manuel Gonzalez Lugo. At Isabel Segunda of Vieques, at four o'clock in the afternoon of the 19th of October, 1892, before Jose Diaz y Prazo, Municipal Judge and his Secretary, Zenon Medina Gonzalez, appeared Juan Pedro Lugo y Otero, of San Juan, Porto Rico, of age, widower, employee, domiciled on San Jose street, who asked that an entry in the civil registry be made regarding a male child and as the grandfather of the said child he declared: That the said child was born on the 16th instant at 4.25 a. m.; that it is a legitimate child of Manuel Gonzalez and Clementina del Carmen Lugo, of Auler, Province of Asturias, of age, married, merchant of Luquillo, of Porto Rico, of age, married, engaged in occupations of her sex, respectively, both domiciled on San Jose street. That he is a paternal grandson of Domingo Gonzalez and Maria Fernandez, the former residing in Spain and the latter being dead, and on the mother's side of Juan Pedro Lugo y Otero, the part-appearing herein, and of Maria Diaz Calzada, deceased, and that the said child was named Manuel. Witnesses to this entry were Adolfo de la Parte y Columbier, of Santander, of age, married, bookkeeper, domiciled on "Esperanza" street, and Jose Diaz y Diaz, of Rio Piedras, of age, unmarried, employee and domiciled on San Juan street. This certificate having been read to the parties who were to sign the same after advising them that they could read it for themselves if they wished, the seal of the municipal court was affixed and the judge signed it together with the witnesses and the affiant and I, the Secretary, certify to the foregoing.

A. DE LA PARTE.
JOSE DIAZ Y DIAZ.

JUAN P. LUGO Y OTERO.
ZENON MEDINA.

(There is an illegible seal.)

This is a true copy of its original to which I certify. In testimony whereof I issue this certificate at the request of M. Tous Soto, after payment of fees, in Vieques, P. R. this 24th day of May, 1911.

JOSE CASTELLON,

Municipal Secretary.

(There is a seal as follows: Office of the Municipal Secretary of Vieques.)

I, Luis S. Vahamonde, Municipal Secretary in charge of the Civil Registry of the Municipality of Rio Grande, do hereby certify that after having examined carefully the books concerning Births of this Civil Registry, of which I am in charge, from the year 1889 and month of October up to this date, I have been unable to find any

entry referring to the birth of a male child named Aristides and two female children named Carlota and Clementina Lugo Calzada, of the town of Luquillo, nor any entry of birth of the aforesaid spouses Gonzalez Lugo. And at the request of attorney Manuel Tous Soto in representation of Clementina Gonzalez, I hereby certify to this act which I sign and affix the seal of this office in Rio Grande, P. R., this 10th day of June, 1911.

LUIS S. VAHAMONDE,
In Charge of the Civil Registry.

(There is a seal as follows: Municipal Secretary, Rio Grande. Fees: \$0.20.)

I, Juan Torrano, Priest of the Parish of this Holy Church of San Jose de Luquillo, diocese of Porto Rico, do hereby certify that in book fourth of Marriages kept in this office under my charge and at folio 21 thereof the following entry appears: In this Parish of San Jose de Luquillo on March 20th, 1884. I, the undersigned priest Juan Torrano, of the said Parish, without canonical or civil impediment, after ascertaining the wills of the candidates, giving them fatherly advice, examining them in the christian religion and following the other necessary requisites, witnessed the marriage contracted by Manuel Gonzalez, unmarried, of San Miguel de Auleo, Council of Navia, Bishopric of Oviedo and resident of this Parish, legitimate son of Domingo Gonzalez and Maria Fernandez, deceased, and Clementina Lugo, unmarried, a native and resident of this Parish, a legitimate daughter of Pedro Lugo and Maria Diaz Calzada, deceased. Witnesses Ezequiel Calzada, unmarried, of age, and Maria Josefa Benitez, married, both of this Parish, to which I certify. Juan Torrano. This is a faithful copy of the original entry. In testimony whereof and at the request of the interested party, I issue this in Luquillo on May 19th, 1909.

Priest, JUAN TORRANO.

(There is a seal of the Parish of Loquillo. Fees: \$0.25.)

I, Juan Torrano, a Parish priest of this Church of San Jose de Luquillo, Diocese of Porto Rico, do hereby certify that in book 13 of baptisms which is kept in the archives of which I am in charge and at folio 268 the following entry appears: In this Parish of San Jose de Luquillo on October 21st, 1895. I, Juan Torrano, Parish priest thereof, solemnly baptized and anointed with the chrism a female child named Carlota who was born on the 29th day of April of this year, a legitimate daughter of Manuel Gonzalez, of Auleo, and of Clementina Lugo, of this Parish. Paternal grandparents, Domingo Gonzalez and Maria Fernandez, and maternal grandparents, Pedro Lugo and Maria Diaz Calzada, Godparents, Jose Lugo and Monserrate Mata, whom I warned of the spiritual relationship and other obligations, to which I certify. Juan Torrano. This is a true and exact copy from the aforesaid book, which

I certify; and at the request of interested party, I issue this copy in Luquillo, this 28th day of May, 1911.

Priest, JUAN TORRANO.

(There is a seal of the Parish of Luquillo. Fees: \$0.25.)

Will.

Will of Manuel Gonzalez y Fernandez. Number 256.

In the ward of Mameyes Segundo of the Municipal District of Rio Grande, at ten o'clock P. M., of the 17th of August, 1904, at the dwelling-house in said ward of Manuel Gonzalez y Fernandez, I, Santiago Rosendo Palmer e Irizarry, a notary of the College of Porto Rico, with residence and office at No. 83 Allen street, San Juan, capital of the island of Porto Rico, and there being present Manuel Benitez Santana and Jose and Diego Roman y Diaz, of age and residents of Rio Grande, who have none of the incapacities mentioned in the Civil Code for acting as witnesses to this open will executed by Manuel Gonzalez y Fernandez, forty six years of age, of Auleo, Province of Asturias, Council of Navia, and a resident of Rio Grande, property owner, married, a legitimate son of Domingo and Maria, the latter dead. He has in my judgment and in that of the aforesaid witnesses, who say that they know him and that he is not incapacitated to execute this will which is done in the following clauses:

First. The testator declares that he is married to Clementina Lugo y Calzada and has had no other wife, they having six children named Maria, Manuela, Aristides, Carlota, Manuel and Clementina Gonzalez y Lugo; that in the unfortunate event that before these children attain their majority their mother should die, who under the law has the patria potestas over the said children, he appoints as their tutor and guardian Santiago Hernandez, a resident of this town, without the necessity of his furnishing any bond and with income for their support, in view of the deserved confidence he reposes in him.

Second. He declares that the condition of his property appears in public and private documents, and that he has given full information concerning the same to said Santiago Hernandez, not only as to the condition of his credits but also as to his debts, in order that either together with his wife or in solidum and for the common welfare he may attend to all that concerns his credits and debts.

Third. He appoints as universal executors his wife, Clementina Lugo y Calzada, and his friend Santiago Hernandez, who jointly and severally shall fulfill his instructions, they being fully authorized to administer, sell, mortgage, or lease his property and to do anything and everything that may be necessary with absolute control as if done by the testator himself, for he desires that in the execution of his will they have every opportunity to act for the benefit of his

107 heirs; that when the obligations that may be pending or be contracted by the said executors are satisfied, they comply jointly and severally and for the benefit of the Administration or course of business so that the property left may be divided among the heirs to be designated and he now appoints as partitioner the said Santiago Hernandez. He also makes clear that among the powers granted to his said executors is that necessary for the execution of promissory notes, receipts, cancellations of mortgages, leases, exchange, and all such deed, documents or contracts as may be necessary.

Fourth. He declares that no property was contributed to the conjugal partnership and therefore the existing property shall be considered as ganancial property.

Fifth. He institutes and designates as his sole and universal heirs in equal shares his children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo and his wife, Clementina Lugo y Calzada, in the portion that by law belongs to her.

Sixth. He revokes and annuls any prior will and declares this to be his last will.

He so stated and signed together with the aforesaid witnesses after I had read aloud and in one single act this instrument and after they were informed of their right to read it themselves, which they did not do. Of knowing the testator, of his profession and residence, of having complied with all the requirements of the Civil Code in one single act and without any interruption, I, the Notary, who mark, sign and paraph this instrument, certify

MANUEL GONZALEZ.

JOSE ROMAN Y DIAZ.

DIEGO ROMAN Y DIAZ.

MANUEL BENITEZ SANTANA.

Signed and marked.

SANTIAGO R. PALMER.

I, Herminio Diaz Navarro, attorney-at-law and notary public with residence and office in this city, do hereby certify that the foregoing copy agrees with its original which is in the protocol of the former notary public, Santiago R. Palmer, now under my charge as General Keeper of Protocols of the District. In testimony whereof and at the request of interested party I issue this copy on two sheets of my notarial paper to which I affix the required internal revenue stamps, make the necessary memoranda thereof, mark and sign in San Juan, P. R., this 1st day of June,

108
1911.

HERMINIO DIAZ NAVARRO,

Attorney and Notary.

(There is an Internal Revenue stamp of 50 cents cancelled with my seal of the Notary.)

JUDICIAL DISTRICT OF HUMACAO, P. R.:

In the District Court.

Ex Parte CLEMENTINA GONZALEZ, née LUGO CALZADA.

Appointment of Defensor.

Order.

The petition of Clementina Gonzalez née Lugo Calzada, asking that Carlos F. Julia Davila be appointed defensor of the minors Manuel, Carlota and Clementina Gonzalez Lugo over fourteen years of age, for the purpose of representing them in the proceedings for division, liquidation and partition of the conjugal society which existed between their father, Manuel Gonzalez y Fernandez, deceased, and the petitioner in the proceedings for liquidation, division and partition of the estate of said deceased having been considered.

Whereas, the aforesaid minors have in said proceedings interests opposed to those of their mother and lawful guardian, petitioner Clementina Gonzalez and they have no grandparents on either side and their brothers of age who also are parties to said proceedings refuse to accept such commission and the minors accept the appointment made by their mother. Therefore, the court hereby appoints Carlos F. Julia Davila, of age, property owner, married and resident of Naguabo, defensor of the minors Manuel, Carlota and Clementina Gonzalez Lugo, to represent them in said proceedings for the liquidation, division and partition of the ganancial property and estate of their father, the said minors being required to appear in the said proceedings as well as their defensor. Given at Humacao, P. R., in open court, this 21st day of August, 1912.

J. A. LOPEZ ACOSTA.

Judge of the District Court.

Attest:

JESUS L. PEREYO,

Clerk.

I, Jesus L. Pereyo Correa, Clerk of the District Court for
109 the Judicial District of Humacao, P. R., do hereby certify
that the foregoing transcript agrees with the original thereof
which appears in the record of the case on file in this office under
my custody. And at the request of attorney M. Tous Soto I issue
this copy which I sign and affix the seal of the District Court of
Humacao, P. R., this 21st day of August, 1912.

JESUS L. PEREYO,

Clerk.

By JOSE M. PEREZ,

Deputy Clerk.

(There is a seal as follows: District Court of Humacao, P. R.)

Purchase and Sale.

Number Two Hundred and Forty.

In the city of San Juan, Capital of Porto Rico, on the sixth of August, 1904, before me, Julio Cesar Gonzalez y Gonzalez, notary public of Porto Rico, with residence in said city, and as substitute for notary Santiago R. Palmer, also a resident of this city and with office in the second story of house No. 23 Allen Street, appear the spouses Santiago R. Palmer e Irizarry and Catalina Romaguera y Avila, of age, property owners, and residents of this city, and Manuel Gonzalez y Fernandez, of age, married, property owner and resident of Rio Grande. The parties have according to my judgment, the necessary legal capacity to execute this deed of purchase and sale, freely and voluntarily state:

First. Mr. Palmer e Irizarry that he is the owner of the following properties:

"A." Rural property known by the name of "Islote" or "Islote de Rivolta," composed of 150 acres of first class land, equivalent to 58 hectares, 96 ares situated in the ward of Rio Abajo of the Municipal District of Naguabo, bounded on the north by the Rio Viejo which separates it from the lands of Juan Garzot; on the east by the said Rio Viejo which separates it from the Cercado Ramirez, formerly of Manuela Gutman de Bustelo or Mr. Palmer, down to the confluence of this river and the Rio Blanco Moderno; on the south by the Rio Blanco Moderno which separates it from other lands belonging to the heirs of Pilar Ojeda, and on the west by land of the succession of Cristina Lebron and the succession of Ramon Argueso from a bamboo tree to the starting place of Rio Blanco, thence to the confluence of a gully with the same and the Rio Viejo.

110 "B." Property called "Madama Duran" situated in the ward of Rio Abajo of the district of Humacao, composed of 107.478 acres equivalent to 42 hectares, 24 centares, of level and hilly land, bounded on the north by the Rio Blanco which separates it from the Cercado Ramirez, formerly of Manuela Gutman and now of Garzot y Fuertes, and part of the lands of the succession of Ramon Argueso; on the east, part by the Rio Blanco which separates it from said Cercado Ramirez and part of the lands of Juan Buso; and on the south by lands of Juan Buso, and on the west by lands of the succession of Ramon Argueso.

"C." Property called "Los Puentes" situated in the same place and ward of Rio Abajo of the District of Naguabo, composed of 36.233 acres, equivalent to 14 hectares, 23 ares, of plain land mostly crossed by a road and bounded on the north by lands of Juan Buso and the Rio Blanco which separates it from the Cercado Ramirez, now Garzot y Fuertes; on the east by the said Rio Blanco which is the dividing line of said Cercado Ramirez and lands of Francisco Buso forming a

triangle with the Anton Ruiz river; on the south by land of Francisco Buso forming a triangle with Anton Ruiz river, and on the west by lands of Juan Buso forming a triangle with said Anton Ruiz river.

"D." Rural property known by the name of "Cercado Torres" and also by Maizales situated in the ward of Rio Abajo of the District of Naguabo, composed of 123.140 acres, equivalent to 48 hectares, 39 ares, 87 centares, first class and high land, bounded on the north and east by lands of Jesus L. Pereyo; on the south by land of Petronila Patricia Rios y Gutman and on the west by lands of Ramon Villamil and Marcelino Borges.

"E." Rural property known by the name of "Cercado Maldonado" situated in the ward of Rio Abajo of the District of Naguabo composed of 35.190 acres, equivalent to 13 hectares, 67 ares and 11 centares, bounded on the north by lands of Jesus L. Pereyo; on the east by a brook separating it from lands of Jesus L. Pereyo and the river Viejo which separates it from the property called "Islote de Quinones" and lands of Ramon Argueso or his succession; on the south by said Rio Viejo which separates it from property "Islote Quinones" now Palmer, and on the west by a brook which separates it from lands of Cercado, now Santiago R. Palmer.

"F." Rural property known as "Islote Quinones" situated in the ward of Rio Abajo of the district of Naguabo, composed of 88.95 acres, equivalent to 34 hectares, 33 ares, bounded on the north by the Rio Viejo which separates it from Cercado Maldonado, now of Palmer, and lands of Cercado Torres, now of Petronila Patricia Rios; on the east by lands of Carmen Fuertes, and on the south by the river Blanco of Naguabo which separates it from lands of the succession of Jose Rios y Berrios, and on the west by said river, the farm Las Mulas and the Cercado Torres."

Title.—Second. That the said properties were acquired by him by purchase from Victor Burset y Masferrer by a deed executed in this city on July 6, 1902, before notary Herminio Diaz Navarro, which is exhibited and was recorded in the Registry of Property of Humacao at folios 46, 52, 57 and 62 reverse, fifth entry, and at folio 235, 239 reverse, of volume 10 of Naguabo, properties Nos. 551, 456 duplicate, fourth and fifth entries.

Liens.—Second. That the aforesaid properties are subject to no liens.

Alienation. Fourth. And the said Palmer e Irizarry having agreed to convey the said properties with the consent of his wife, hereby sells to the purchaser Gonzalez y Fernandez the said properties with all his rights and without any reservation for the sum of thirty dollars American dollars, which sum the vendor acknowledges having received from the purchaser prior to this deed, for which he gives a receipt and is bound in warranty according to law.

Value.—Fifth. For the purposes of record in the Registry of Property the aforesaid properties are valued in the order of their descriptions in the sum of ten thousand and five hundred dollars, four thousand and eight hundred and fifteen dollars, one thousand and one hundred dollars, four thousand nine hundred and sixty five dollars, six thousand one hundred and sixty dollars and two thousand four hundred and fifty dollars.

Acceptance.—Sixth. The purchaser accepts this deed in all its parts and both contracting parties select the city of San Juan for all proceedings and notices that may arise by reason of this contract.

112 Legal Reservation.—Seventh. The parties make express reservation in favor of the Insular and Municipal Treasury as to the legal mortgage which has preference over any other mortgagee for the collection of the last annual tax not paid on the property referred to.

Warnings.—I, the notary warned the parties as follows:

First. That when receipt of the consideration for this conveyance is acknowledged the properties are free from all liability although thereafter it may be shown that no delivery was made in whole or in part.

Second. That a copy of this deed should be presented in the Registry of Humacao for record, for without said requirement it will not prejudice third parties nor will be admitted in any court, council or government office.

Execution. It was so stated and executed by the parties before me and in presence of witness Manuel Torrellas and Eduardo Lopez Tizol, of age, and residents of this city.

Reading. I read this deed to the contracting parties and witnesses after having advised them of the right they had to read it themselves, who stated they were well acquainted with the contents thereof and after the parties ratified it they signed together with the witness. Of which, as well as of the knowledge, professions and residence of the contracting parties and of all matters therein contained, I the notary certify.

SANTIAGO R. PALMER.
CATALINA R. PALMER.
MANUEL GONZALEZ.
MANUEL TORRELLAS.

Witness:

EDUARDO LOPEZ TIZOL.

Marked and signed.

JULIO CESAR GONZALEZ.

(There is an internal revenue stamp of one dollar.)

This copy agrees with its original which is in the current protocol of Santiago R. Palmer to which I refer. In testimony whereof and at the request of the purchaser I issue this first copy which I mark and sign in the city of San Juan on the same day of its execution.

JULIO CESAR GONZALEZ,

Notary.

113 (There is an internal revenue stamp of fifty cents canceled, and the notary's seal.)

Number 317, folio 298, reverse, volume D h. 8:15. Humacao, July 5, 1908. Record of the foregoing instrument at folios, properties and entries as indicated herein. Municipality, folio, property, entry Naguabo, 11-18-452 Du. 8th. Naguabo, 11-22 reverse, 453 Du. 8th Naguabo 1333-140 454 Du. 8th Naguabo 9-63 reverse, 455, 7th Naguabo 10,226 reverse, 551 6th Naguabo 10-241-456 Du. 7th.

Humacao, P. R., June 9, 1908.

J. M. CUADRA,

Registrar of Property pro Tempore.

(There are internal revenue stamps canceled for the value of \$50.00.)

Number Sixty.

In the city of San Juan, capital of Porto Rico, on February 8, 1902, before me, Santiago R. Palmer, notary of the Porto Rico College, with residence in this city and office in the second story of house No. 23 of Allen Street, appear of one part Carlos H. Lunt, of age, married, merchant and a resident of this city as attorney in fact for Mary Alma Georga Schouring, widow of Duplace, as shown by the power of attorney executed in his favor in Altona on October 9, 1900, before notary Otto Wedekind which power of attorney after being authenticated by the United States Consul in Hamburg, Mr. Hugh Pitcairn, he offers and withdraws. And of the other part Manuel Gonzalez y Fernandez, married, of age, property owner and resident of Rio Grande. The parties have, in my judgment, the necessary legal capacity to execute this deed of purchase and sale of a property and say:

First. That Mary Alma Georga Schouring, widow of Duplace, is the owner of the following real property:

"Rural property without name situated in the ward of Mameyes of the municipal district of Luquillo, now Rio Grande, of the Registry of Property of Humacao, composed of 49.73 acres, equivalent to 19 hectares, 54 ares, 78 centares, bounded on the south by the property "Pieua" of Angel Garcia Veve; on the north by the sea; on the east by the property Carmelita of Jorge Bird y Leon; and on the west by lands of said Duplace."

114 This property is recorded in the name of Ludowig Duplace Adler, at volume 7 of the Municipality of Luquillo, at folio 192, No. 251, entry 1.

2nd. Lands situated in said ward of Mameyes composed of 265 acres, equivalent to 104 hectares, 25 arcs and 43 centares, bounded on the north by the sea; on the south by lands of Francisco Bonano and Federico Garcia and on the west by lands of Rosendo Matienzo Cintron.

The said property is recorded in volume 4 of Luquillo, folio 239, number 229, first entry.

Second. That the described properties were acquired by her principal as universal heir of her husband, Ludowig Duplace, as appears from the closed will which was opened in the United States Court for Porto Rico.

Liens.—Third. That the said properties are free from all liens.

Agreement.—Fourth. That the parties having agreed as to the purchase and sale of the described properties and desiring to perfect this contract in the aforesaid manner, Carlos H. Lunt, in the character in which he appears, sells the same to Manuel Gonzalez y Fernandez with all the rights corresponding to his principal for the sum of one thousand and five hundred dollars which sum he acknowledges having received prior to this deed in American money and therefore gives him a receipt, the principal being bound in warranty as to the properties sold under the provisions of section 1471 of the Civil Code.

Legal Reservation.—Fifth. The parties make express reservation in favor of the Insular and Municipal Treasury, the same having preference over any other creditor for the collection of the last annual tax unpaid on the properties sold.

Acceptance.—Sixth. Manuel Gonzalez y Fernandez accepts the sale and effects in all its parts. I the notary advise the parties that this instrument should be recorded in the Registry of Property of Humacao so that it may affect third parties and for its admission in the courts, councils and government's offices.

So it is executed by the contracting parties before me, being witnesses the residents of this city Antonio E. Fernandez and Jose H. Boneta. The foregoing instrument was read by me to the parties and witnesses and I advised them of their right to read it
115 themselves. They state that they are acquainted with its contents which is ratified by the parties and all sign, of which, as well as to the knowledge of the parties and of all I say or refer in this instrument which I authorize in two sheets of my use, I, the notary certify.

K. H. LUNT.

MANUEL GONZALEZ.

ANTONIO E. FERNANDEZ.
JOSE E. BONETA.

Marked and signed.
SANTIAGO R. PALMER.

This is a first copy which agrees with its original in my general protocol of current date under number sixty, and at the request of Mr. Gonzalez I issue this copy on two sheets of paper on the day of its execution.

Marked.

SANTIAGO R. PALMER. [RUBRIC.]

(There is a stamp of internal revenue of fifty cents, canceled with the notary's seal.)

No. 220. Folio 85 T. 11:00 D. H. Humacao, March 3, 1902. Record of the foregoing instrument denied for the defects that the power of attorney showing the capacity and power of the attorney in fact is not presented and because the properties the titles to which are transferred are not recorded in the name of the seller nor of a third person. Incurable defect. Sect. 20 of the Law.

Humacao, March 3, 1902.

JOSE TORO RIOS.

Purchase and Sale.

Contracting Parties, Jose Agustin Diaz, Succession of M. Gonzalez. Witnesses: Eduardo Cautino, Francisco Soriano.

Number three. In the city of San Juan, Porto Rico, on February 4, 1910. Before me, Juan Morera Martinez, attorney-at-law and notary public of this island with residence and office in the aforesaid capital. Appear: Of one part Jose Agustin Diaz y Gomez, property owner, married, forty-six years old and a resident of Fajardo; and of the other, Juan M. Galleti, married, thirty years old and resident of San Juan. Both parties, in my judgment, have the necessary legal capacity for this execution. The former appears in his own right and as attorney in fact of his lawful wife, Carlota

116 Longpre y Benitez, by virtue of a power of attorney executed before notary Jeronimo Calzada y Hernandez on January 31st, 1905, whose capacity and general powers therein conferred for contracts of purchases and sales he will prove whenever and wherever it may be necessary. The other party appears as paroll agent of Clementina Lugo, widow of Gonzalez, who is the representative of the succession of Manuel Gonzalez y Fernandez. The said Diaz Gomez by virtue of his capacity states that he is the owner, together with his legitimate wife, of the following property:

"Rural property composed of 100 acres, more or less, equivalent to 39 hectares, 30 ares and 40 centares, situated in the ward of 'Zarzal' of the municipal district of Rio Grande, bounded on the north by lands of the succession Bonano; on the south by those of Juan Jose Rodriguez; on the east by lands of succession of Aureo Diaz, and on the west by other lands of the said succession of Aureo Diaz and Juan Jose Rodriguez."

Second. That they acquired the said property while married by purchases made at different dates from Maria Rodriguez Rosario and Juana Carmona Rodriguez who were unable to transfer to them a

dominion title because they did not have any, but that in their capacity of true owners the said spouses Diaz y Longpre so stated through a proceeding for dominion title which was instituted in the District Court of San Juan which is still pending record.

Third. That the said property is not subject to any liens whatever.

Fourth. That by a deed executed on June 5, 1908, before notary Aldrey and where the parties were the Succession of Manuel Gonzalez and Jose J. Benitez, the following was stated in the third clause:

"Third. It is stated by the parties hereto that the Succession of Gonzalez and Jose A. Diaz y Gomez have made a contract by virtue of which the former was to sell the latter the property 'Madama Duran,' and the latter the property 'El Zarzal' to the former, which property is situated in the District of Rio Grande, the said rights all having been transferred by virtue of the deed of dissolution of the agricultural society Diaz & Benitez executed before me in the city of Humacao to Jose J. Benitez Diaz, so that by his acquiring now the property Madama Duran, the succession of Gonzalez will acquire by another separate deed the title to the property 'El Zarzal.'"

117 Fifth. That the statement made in the foregoing clause being entirely true and the succession of Gonzalez having transferred to Benitez Diaz the full ownership of the property "Madama Duran" by deed executed some time ago, the date thereof not being remembered just now by Diaz, and by reason of the demand made on him by the succession of Manuel Gonzalez he now appears to perfect the proper title in favor of said succession by this deed. He therefore says:

(a) That he sells and transfers absolutely and without reservation of any kind to the succession of Manuel Gonzalez y Fernandez consisting of Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, the described property with the metes and bounds given in the First Clause of this instrument.

(b) The consideration for this contract is the transfer made by the Succession of Gonzalez to Diaz of the property called "Madama Duran" in compliance with the agreement referred to in the fourth clause of this deed and of the delivery of the sum of one thousand, two hundred dollars that Diaz delivered to the Succession upon the execution by the said succession of the corresponding deed and giving him possession of the property "Madama Duran".

(c) The seller, in the capacity in which he appears, becomes bound in warranty according to law and the succession of Gonzalez will enter into possession of the property without any further requirement than this deed.

(d) In view of the fact that Jose Augustin Diaz does not know the proportions of the members of succession Gonzalez in this property, they will designate by a notarial act and a writing to the Registrar of Property their shares in said property.

(c) Mr. Galleti on his part states that he accepts this deed in the name and in favor of the succession of Manuel Gonzalez, it being in conformity with the instructions given him.

The contracting parties and the witness Eduardo Cautino and Francisco Soriano, of age, and residents of this city, being present, this instrument was read and all the parties assented to it and signed with the witnesses, of which, as well as to the acquaintance of the undersigned with the parties, of their personal circumstances
 118 according to their statements and all that is said and referred to in this instrument which I mark, sign and rubric, I the notary certify.

J. A. DIAZ.

JUAN M. GALLETI.

EDUARDO CAUTINO.
 FRANCO. SORIANO.

Marked.

JUAN MORERA MARTINEZ.

The foregoing copy agrees with its original which I have examined and under the above number is in protocol of public instrument to which I refer. Attest. And at the request of the purchasers I issue this copy on two sheets of paper of my use, after having taken a memorandum thereof and canceled an internal revenue stamp of 50 cents, which I mark and sign this 7th day of August, 1912.

Marked.

JUAN MORERA MARTINEZ. [RUBRIC.]

(There is an Internal Revenue stamp of 50 cts. canceled, with the Notary's seal.)

Document of Sale.

Be it known by this private document, which we desire to have the effect of a public document, that we Luis Benitez Neron Longpre and Candida Rexach y Dueno, jointly and severally sell to Manuel Gonzalez y Fernandez a rural property situated in the ward of Mameyes Segundo of the municipal district of Rio Grande, composed of one acre and a half, more or less, of plain land, for the sum of two hundred and forty dollars, which sum we have received to our full satisfaction; therefore we renounce any rights we had and convey the title of ownership to said property to be held and enjoyed as his by our purchaser. The said property is bounded on the north by the road leading to Rio Grande; on the south by a brook of Aguas Corrientes; on the east by lands sold by us to our purchaser at a prior date, and on the west by country road leading to the mountain. In making valid this instrument and becoming responsible in warranty we bind our present property and that which we may acquire in the future, and sign the said document together with the witnesses in San Fernando de la Carolina this first day of October, 1903.

CANDIDA REXACH Y DUENO.

Witness.

FELIPE SANCHEZ.

I, Manuel Tous Soto, attorney-at-law and notary public of 119 Porto Rico, with residence in the city of Humacao, Porto Rico, do hereby certify that the foregoing is a true copy of its original which is deed No. 61 of the protocol of the present year 1912, which is made on 49 sheets of current paper for copies and written in typewriting on one side only; and at the request of Jose Rodriguez Fuertes, I authorize, mark and sign it. The seal of my Notarial office also appearing, in the city of Humacao, P. R., this seventh day of August, Anno Domini, 1912.

M. TOUS SOTO. [RUBRIC.]

(There is a stamp.)

The foregoing instrument was presented today at 8 o'clock a. m., as shown by entry No. 44, folio 20 reverse, volume 9 of the Journal, the same to be recorded only as regards the properties Nos. 30, 31 and 32 of the inventory.

Humacao, October 4, 1912.

THE REGISTRAR.

The property referred to in the foregoing note is recorded as regards the 145.27 acres, which, according to the Registry, is recorded by virtue of segregations from the property Islote Rivolta inventoried under No. 30, volume 16 of Naguabo, folio 43 reverse, property No. 452, triplicate, 11th entry, and record is refused as to the balance of 9.58 acres which is the balance to complete the area which according to this instrument is the area of the property, inasmuch as the said balance is not recorded, and a cautionary notice is entered in its place for the term of 120 days at said volume and folio, annotation "C"; record is made as to the property Cereado Torres, or Maizalez, inventoried under No. 31, volume 13 of Naguabo, folio 145, reverse, property No. 455 duplicate, ninth entry, and record is made as to 33.485 acres, which, according to the Registry, is reduced by segregation from the property Cereado Maldonado, inventoried under No. 32, volume 10 of Naguabo, folio 233, property No. 551, eighth entry; and record is refused as to the 1.71 acres of said segregation which appears recorded in the name of a third person and it not so appearing from the present instrument, and a cautionary notice is entered in its place for the period of 120, at the volume and folio last mentioned, annotation letter "A".

Humacao, P. R., October 4, 1912.

The Registrar, MIGUEL PLANELLAS.

120 Internal Revenue stamps for the value of \$38 have been cancelled in compliance with Nos. 1 and 5 of the tariff and the Internal Revenue Law.

Humacao, P. R., October 4, 1912.

The Registrar, MIGUEL PLANELLAS.

Notice of the foregoing decision received by me as the person who presented the document for record.

October 4, 1912.

ARTURO APONTE, JR.

Extension.

The plaintiff offers in evidence deed No. 56 of extension of the Inventory and Partition of the property of the estate of Manuel Gonzalez Fernandez, executed in Naguabo on August 30, 1913, before Notary of Humacao, Arturo Aponte.

Attorney for Mr. Benitez objects to the admission of the said instrument on the ground that the parties to the said instrument had no authority to execute it, because they are calling themselves the owners of a property which legally they had already sold, and also because the said deed is not recorded in the Registry of Property.

Attorney for Diego Garcia Ortega also objects to the admission of this instrument because it is an instrument executed in the month of August, 1913, by all of the members of the succession of Manuel Gonzalez Fernandez without being in possession of the property and having it recorded in their names; that is to say, that they prepare a deed whereby they make a division of said properties and, besides, it is an instrument which cannot affect Garcia Ortega.

Plaintiffs also offer as a part of the said deed an order of the District Court of Humacao of October 25, 1913, according to which the proceedings for extension of the inventory and partition of the properties of the estate of Manuel Gonzalez Fernandez was duly approved by the said court as regards the minors who appeared therein by their defensor.

The defendants also object to the admission of the said instrument because it is not recorded in the registry of property.

The court refuses to admit the instrument in view of the fact that it was made subsequently to the time when the cause of action arose in this case. The evidence must be with reference to the time when the cause of action arose, according to the court's opinion, it arose when the sale was made with the approval of the District Court of San Juan.

The plaintiffs state that the document rejected by the court, which is the deed of August 30, 1913, with regard to the extension and partition of the properties of the estate of Manuel Gonzalez Fernandez, executed by his heirs under No. 56 in Naguabo before notary Arturo Aponte Rodriguez, has been offered for the purposes of proving the fourth count of the complaint and with the object of denying specifically the allegation marked No. 3 of the amended answer last filed, which was admitted by the court as presented by the defendant, Jose J. Benitez Diaz, as well as the denial made in the answer of Diego Garcia Ortega, and that this document in substance would prove or tend to prove that the plaintiffs at that date, August 31, 1913, met in the said town of Naguabo, to wit: Clementina Gonzalez, née Lugo y Calzada, widow of Gonzalez, of age; Maria Gonzalez de Julia; Manuela Gonzalez de Rodriguez Cebollero, both married, also of age; Aristides Gonzalez 23 years old; Manuel Gonzalez a student, 20 years of age, unmarried; Carlota Gonzalez, 18 years of age, unmarried, a student; Clementina Gonzalez, unmarried, a student, 16 years of age, all residents of Naguabo,

and Carlos F. Julia Davila, as defensor of the said minors, whose capacity was duly proved. That after all formalities of the law were complied they state: First, that on August 21, 1912, the heirs of Manuel Gonzalez y Fernandez, deceased, having appointed Manuel Tous Soto as partitioner, he proceeded in accord with the interested parties, to liquidate and partition the estate of the said Gonzalez, forming the general mass of the property, and making the schedules of the heirs which were later presented to the District Court of Humacao for approval; that the said partition was approved by the judge of said court two days thereafter, or on August 23rd, and the said court ordered that it be protocolled in the notarial office of Manuel Tous Soto as was shown by the petitioners; that in the inventory made by the partitioner no mention was made in the general mass of the property of the following three properties which are described as they appear in the complaint and which are called "Los Purentes", "Madama Duran" and "Islote Quinones"; that the

122 said three properties, although they are recorded in the name of the predecessor in title Manuel Gonzalez Fernandez in the Registry of Property of Humacao at the volumes and folios mentioned in said instrument, do not appear to have been allotted or distributed among the heirs with their corresponding values; that in view of this they desire to supply the said omission and state as an extension, complement and explanation of the account and division made by the said partitioner, Manuel Tous Soto, on August 21, 1912, that the three described properties should be considered as added to inventory there made, the same to be distributed among the co-heirs at the values of, the first, two thousand dollars, the second, sixteen thousand dollars, and the third, fifteen thousand dollars. That the said properties are distributed or allotted as follows:—

The court ruled that this instrument should remain in the record so that it might be referred to in any transcript or statement of the case or subsequent proceeding that may be necessary as well as the authorization of the court attached to it. And it is marked for purposes of identification as "Exhibit G" of plaintiff and rejected. Plaintiff took exception to the ruling of the court refusing to admit the two exhibits marked under letter "G" of the plaintiff.

The said documents read as follows:

Decd of Extension of the Inventory and Partition of the Estate of Manuel Gonzalez Fernandez.

Number Fifty-Six.

In the town of Naguabo, Judicial District of Humacao, Island of Porto Rico, on the 30th day of August, Anno Domini, 1913, before me, Arturo Aponte Rodriguez, notary public, resident of Humacao, with office on San Jose street and temporarily in the town of Naguabo, Appear: Clementina Gonzalez, née Lugo y Calzada, widow of Gonzalez, of age, property owner and resident of this town. Maria Gonzalez de Julia and Manuela Gonzalez de Rodriguez Cebollero, both

married, also of age and engaged in the occupations customary to their sex. Aristides Gonzalez, twenty-three years of age, farmer and of the same town. Manuel Gonzalez, a student, twenty years of age, and unmarried, Carlota Gonzalez, eighteen years of age, unmarried and a student, Clementina Gonzalez, unmarried, student, sixteen years of age and resident of Naguabo, and Carlos F. Julia Davila as defensor of the said minors whose capacity he will duly show when necessary.

I certify to my personal acquaintance with the parties appearing herein and of their ages, status, occupation and residence as stated by them who assure me that they are in the full enjoyment of their civil rights for which I consider them as having the necessary legal capacity to make the extension of the inventory relative to the estate of said Manuel Gonzalez Fernandez and successive distribution of same among the heirs and widows, the parties freely and voluntarily stating:

First. That on the 21st of August, 1912, they having appointed Manuel Tous Soto as partitioner of the estate of Manuel Gonzalez y Fernandez, he proceeded, in accordance with the instructions given him by the said heirs to liquidate and partition the estate of said Gonzalez forming the general mass of the property and preparing the schedules of the heirs which were subsequently presented to the District Court of Humacao for its approval.

Second. That the said partition was approved by the judge of the said court two days later, or on the 23rd of August, who ordered that it be protocolled in the notarial office of Manuel Tous Soto as prayed by the petitioners.

Third. That no inclusion was made in the inventory of the general mass of the property prepared by said commissioner of the three following rural properties:

(a) A rural property known as "Los Puentes", situated in the place bearing the same name in the ward of Rio Abajo of the municipal district of Naguabo, composed of 36.223 acres, equivalent to 14 hectares, 23 ares, of plain land crossed by a road; bounded on the north by lands of Juan Buso and the river Blanco which separates it from Cercado Ramirez, now of Garzot and Fuertes; on the east by said Rio Blanco which is the dividing line of said Cercado Ramirez and lands of Francisco Buso at an angle with the river Anton Ruiz; on the south by lands of Francisco Buso at an angle with the river Anton Ruiz, and on the west by lands of Juan Buso at an angle with said river Anton Ruiz.

(b) Property known by the name of "Islote Quinones", situated in the ward of Rio Abajo of the municipal district of Naguabo, composed of 88.95 acres, equivalent to 34 hectares, 23 ares, bounded by Rio Viejo which separates it from Cercado Maldonado, now of Palmer, and lands of Cercado Torres, now of Petronila Patricia Rios, on the east by lands of Carmen Fuertes; on the south by the Rio Blanco of Naguabo which separates it from

the succession of Jose Rios y Berries, and on the west by said river, the farm Mulas and the Cercado Torres.

(c) Property known by the name of "Madama Duran" situated in the ward of Rio Abajo of the Municipal District of Naguabo, consisting of 107.468 acres, equivalent to 42 hectares, 24 ares, of plain and mountain land; bounded on the north by the Rio Blanco which separates it from Cercado Ramirez, now of Garzot and Fuertes, and in part by lands of the succession of Ramon Argueso; on the east in part by the Rio Blanco which separates it from Cercado Ramirez and part of the lands of Juan Buso, and on the west by lands of the Succession of Ramon Argueso.

Fourth. That although these three properties are recorded in the name of the predecessor Manuel Gonzalez at folio 140 reverse, volume 13 of Naguabo, property No. 454, duplicate, ninth entry as to the first, at folio 24 reverse, volume 10 of Naguabo, property No. 456 eighth entry as to the second, and at folio 23 volume 11 of Naguabo, property No. 453, duplicate, ninth entry as to the last, they do not appear to have been allotted or distributed among the heirs with their corresponding values.

Fifth. That in view of the foregoing they desire to supply the said omission and say, *ad perpetuam rei memoriam*, so that it be considered as an extension complementary and explanatory of the account and division made by the said partitioner Manuel Tous Soto on August 21, 1912, that the aforesaid three properties should be considered as added to the inventory made, they being distributed among the heirs, the first one (a) being valued at two thousand dollars, that with letter (b) at sixteen thousand dollars and letter (c) at fifteen thousand dollars.

Sixth. That the said properties are distributed and allotted in the following manner: to widow Clementina Gonzalez, nee Lugo Calzada, a share of one undivided half in a house of the three described properties, its total value being sixteen thousand five hundred dollars, specified as follows: in the property letter (a) one thousand dollars, in letter (b) eight thousand dollars and in letter (c) seven thousand five hundred dollars; and to the heirs Maria Gonzalez de Julia, Manuela Gonzalez de Rodriguez Cebollero, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, to each a one-sixth undivided part in each of the three properties, or an undivided portion of one hundred and sixty-six dollars and two-thirds for each in the property letter (a); another undivided portion of one thousand and three hundred and thirty-three dollars and one-third for each in the property letter (b), and another undivided portion of one thousand and two hundred dollars to each, in the property letter (c), the said heirs having received by reason of said shares their hereditary shares.

Seventh. It is averred by Clementina Gonzalez that in this additional partition as well as in the original she renounces for the benefit of her children her usufructuary share as a widow.

So it is declared and stated before the witnesses Faustino Fernandez and Armando Marquez of this town, who appeared in a single act to whom as well as to the interested parties I read this deed after having advised them of their right to read it themselves which they waived. Of all this and of the contents of this instrument, I certify.

CLEMENTINA L.,

Widow of Gonzalez.

MARIA G. DE JULIA.

MANUELA G. DE RODRIGUEZ.

ARISTIDES GONZALEZ.

MANUEL GONZALEZ.

CARLOTA GONZALEZ.

CLEMENTINA GONZALEZ.

CARLOS F. JULIA.

FAUSTINO FERNANDEZ.

ARMANDO MARQUEZ.

Marked.

ARTURO APONTE.

(There is an Internal Revenue stamp canceled, with the name of the locality, date, initials of the notary and seal of his office.)

The foregoing agrees with its original which is in my general protocol of this year to which I refer. And at the request
126 of attorney Jose A. Poventud I issue this first copy, which I sign, mark and seal, after making a note on the margin of its original, to which I affix a stamp as required by the law.

Humacao, P. R., September 2, 1913.

Marked.

ARTURO APONTE.

(There is a stamp of fifty cents, canceled.)

JUDICIAL DISTRICT OF HUMACAO:

District Court.

ARISTIDES GONZALEZ. Ex Parte.

Approval by the Judge.

Order.

After considering the deed No. 56, executed before the notary of Humacao, Arturo Aponte Rodriguez, on August 30, 1913, by Clementina Gonzalez, née Lugo Calzada, Maria Gonzalez de Julia, Manuela Gonzalez de Rodriguez Cebollero and Aristides, Manuel, Carlota and Clementina Gonzalez, of extension of inventory and partition

of property of the estate of Manuel Gonzalez y Fernandez and the motion of petitioner Aristides Gonzalez accompanied by a copy of the said deed, the court is of the opinion that it should approve and does hereby approve the transactions made in the said deed in the manner in which it has been done, as the interest of the minors have suffered no injury.

Given under my hand in Humacao on the 25th day of October, 1913.

J. A. LOPEZ ACOSTA,
Judge of the District Court of Humacao.

Attest:

JESUS L. PEREYO,
Clerk.

I, Jesus L. Pereyo, Clerk in and for the District Court for the Judicial District of Humacao, P. R., do hereby certify that the foregoing transcript is a true copy of its original which is filed in this office. And to deliver to the interested party I issue this copy in Humacao, this 25th day of October, 1913.

JESUS L. PEREYO,
Clerk District Court of Humacao, P. R.

(There is a stamp.)

The documentary evidence of the plaintiff having been submitted the following oral evidence was examined:

IGNACIO MORALES, after being sworn, testified that his name is Ignacio Morales and he has resided in Naguabo for a period
127 of seventeen years and is a farmer; that he has been engaged in agriculture for some 18 or 20 years and in the district of Naguabo for about 16 or 17 years; that he knows the properties of Naguabo; that he has been engaged in planting sugar cane there, but he is also familiar with the pasture lands; that he knows the value of some of the pasture lands in the district; that he knows the properties called "Madama Duran", "Islote Quinones" and "Los Puentes", the latter known also by the name of "Berlanga", where he has been frequently; that in his opinion the fourth part of all these three properties has a value of ten thousand dollars.

That he knows the property called "Islote Quinones" which is composed of from 87 to 88 acres and its lands are of the best class; that he considers that property as the best in Naguabo; that it is planted in sugar cane and is the best land there for sugar cane; that according to the prices in that district, that property will rent for from \$2,000 to \$2,200 yearly; the property "Islote Quinones" that the witness would be willing to pay that much for the property as lessee.

The other property of 107 acres called "Madama Duran" ad- that he knows the property because he has been there many times; that the land is not as good as those of "Islote Quinones", but almost

as good; that that property will rent for \$14 or \$15 per acre, or \$16 at most, or a total of \$1,700, more or less per year.

He is not certain as to the acreage of the properties "Berlanga" or "Los Puentes", but thinks it is composed of thirty and odd acres that no more than \$390 or \$400 would be paid for a lease of that property per annum, or at the rate of \$14 per acre, \$12 to \$14. However, it has now produced cane as good as any other. All these lands are dedicated to cane and very little is not planted; the three properties are planted in cane; very little remains unplanted in Islote Quinones; all is planted in cane, the very best cane, very good.

Answering questions of the judge he said that what is called Islote Quinones is not an island; that it was formerly called an island because in fact it was an island—there was a river surrounding it—but now it does not.

Cross-examined by the defendant he answered that he can say approximately that the following are the boundaries of Islote 128 Quinones: On one side it is bounded by land of the succession of Rios and the Rio Blanco; on the front it was bounded by what was known by the succession of Maria Rios, the said succession having purchased from central San Cristobal, and on the other side by the succession of Argueso; that at times of heavy rains the river covers the property, but that it is a benefit and makes it so valuable because the sediments from the water is deposited and causes it to produce all the time. That that property is now being cultivated by Mr. Eugui and the witness has seen there planted a variety of canes, such as Cristalina and Rayada and the production is quite good.

The other property of 107 acres called "Madama Duran" adjoins the property "Los Puentes" and consists of good land; that it is bounded by lands of the succession of Argueso, the Rio Blanco and the property known "Los Puentes"; on the west it is also bounded by Las Mulas. That property is now planted in cane, although a small portion may not be, but it is almost all planted.

That the other property is bounded by the cocoanut grove but on the other side of "Los Puentes" and the land is not as good as the land of "Los Puentes", although it is good enough and is also planted in cane; that he has seen there some cocoanut palms; that he does not know whether that property has been rented to any other person for planting cocoanut palms; that he has seen some cocoanut palms and some cane inside.

That the estimate he makes of the production is based on the cane he has seen; that the vegetation is quite abundant.

That he has seen a production now of fifty tons per acre of the class of cane called "Cale * * *"

X Q. 1. Do you know if such cane is received now in the sugar factories?

A. Mr. Jorge Bird is purchasing seeds from us and is paying four dollars per cart load of that same cane for planting in San Cristobal. We are grinding it at the Central and it is also accepted by Pasto Viejo.

That it is not true that that is only accepted by the Central of Fajardo at a certain per cent less than the other cane; they take it there at six per cent.

That the witness is an employee of Faustino Fuertes but on a percentage basis and not on a salary; that it is untrue that that cane is given to Faustino Fuertes at five per cent; that he pays six per cent.

That he has spoken of the production of said three properties, but is unable to say what was their production in the year 1909, as he is not sure of it, nor can he say what was their production in the year 1910, but he knows that the cane planted there is very good. That he is unable to say anything as to the crops of the year 1911; that he can speak of this year and last year. As to the years 1917, 1916, 1915, 1914, and even from the year 1913 to this time when they were beginning to plant them, he is unable to say what their production was, but the cane weighed 30 tons per acre. Cane is sold at a certain percentage and a ton of cane represents 420 pounds of sugar at six per cent. That these three properties produced in the year 1913 some forty tons per acre. That he has no work on the said properties but sees them. He did not help in the hauling, nor did he supervise the cutting of the said cane, nor was he present when it was weighed at the Central. That in the years 1914, 1915, 1916 and 1917 the production was not equal to that referred to now, for the cane is planted and the first year gives a production of some 50 tons per acre at those places; then the ratoons are left and are much inferior to first crop which is 50 per cent more than the ratoons which some times produce 30 or 35 tons per acre; so that it is not equal.

That he makes the statement on his general experience in planting sugar cane and not his specific knowledge as to the production of said properties. He cannot say how many acres are planted in cane of the said properties. He does not know either how many acres are in first crop; that he cannot explain that, but speaks in general terms.

Witness ARTURO APONTE, JR., having been called and sworn testified that his name is Arturo Aponte, Jr., and he lives in Humacao. He has always lived in Humacao except during the time he was in the United States, which was five years and a half; that he has been all his life in Humacao with the exception of that short period. He knows the district of Naguabo; that for some seven years he engaged in the purchase of lands, though not so specially as to the profession of law. All of his earnings were dedicated to the purchase of lands.

He has property in the district of Naguabo; that he has had and has now property leased to others in that locality. He knows, though not perfectly or absolutely, but relatively, the quality of the lands due to his investigations and has sufficient knowledge to be able to estimate this production and can determine with sufficient certainty what lands are good in Naguabo, which are the best lands of Naguabo, and in general which are fit for sugar cane.

He knows the property called "Isote Quinones," which is situated in the District of Naguabo. The area of that property is known by him because he has examined the titles. He does not know it ex-

actly. That everybody in Naguabo knows the area of that property as it has been famous for years. That is the best land in the district of Humacao. To speak of the Islote Quinones in Naguabo is to speak of the best land in the district and everybody takes an interest in knowing its area. It is said that it is composed of 88 acres. He has been on that land several times and has tried to buy it. The land is first class and I can say that a ditch was made in Islote Quinones which starting from an adjoining islet went through Islote Quinones traversing the property of Mr. Argueso; that ditch was made for the benefit of adjoining lands; it was three yards deep, and all was excellent soil. The land is of the first class and his father-in-law offered \$350 for that property, but they were not willing to sell it at \$350 per acre.

That property was leased by Jose J. Benitez to Prudencio Eugui at the rate of \$20 and odd dollars per acre. He has received offers at present of \$25 per acre and he did not wish to lease it; but another offer was made; an adjoining property was leased to him which is nearly as good as Quinones at \$15 per acre in case he would be willing to lease at \$25 an acre in Quinones. I have seen at "Quinones" some months ago when people talked of the intervention of the United States in the war that some beans and corn were planted at the edge of the cane and the plants of beans and corn that grew there surprised everybody in Naguabo because they were of phenomenal size. An offer was made to lease that property at \$25 per acre and the former lessee paid twenty and odd dollars. He paid \$2,000 yearly, according to a public instrument offered in evidence. In "Quinones" there has been cane giving an average of 60 tons per acre. Witness would be willing to pay that much for a lease, and

not only that but would make a sacrifice to lease it. It is a
 131 property that has been desired by everybody. It was leased to Prudencio Eugui and a man by the name of Juan Nogueras had to pay a premium to the lessee to rescind the contract. He does not estimate that the property yields \$2,000 in rent yearly, but at the rate of \$25 per acre he thinks it would yield more than two thousand dollars. He does not remember that it has ever been leased for less than \$2,000 per annum.

Q. 1. Can you say whether that property has produced that sum from the year 1908, when the deed was executed, up to this time?

A. From the year 1908 to 1910, I cannot say, but as the land has always been the same, I suppose that it gave the same production or better, because formerly the land was not cultivated so much as it is now and ten years ago the land was more fertile than now.

From the year 1908 to 1910 or 1911 the cultivation of sugar cane in Porto Rico at least in that district where Central San Cristobal was established in 1905, when the results attained by that Central were seen everybody engaged in planting sugar cane, and from the year 1908 to 1911 there was great enthusiasm in that region, everybody engaged in planting sugar cane and enormous sums were paid for lands and that land, not being so exploited at that time, had the value at least that it now has.

That the property "Madama Duran" has been leased by witness

although he is unable to say what was the production from that property from the years 1908 to 1910 or 1911, as he did not know it then, but that said property "Madama Duran" was owned by three persons. It is composed of 107 acres, "Los Puentes" or "Berlanga" contains 36 acres. Both were planted in cane and some 65 acres of another adjoining property; that said three persons received from the said properties last year \$45,000. The property "Madama Duran" is composed of 107 acres, and the witness paid for it for pasture \$90 a month, he being forbidden to plant cane. Then an offer was made of \$15 per acre and the property was taken away from me; that the receiver of Central Pasto Viejo notified the purchaser that offers had been made of \$16 per acre and that the business was prejudicial to the family in leasing it to the witness for \$90, as the property was worth \$15. The witness thinks that the three best properties 132 of Naguabo are "Islote Quinones," "Islote Rivolta" and "Madama Duran." With regard to "Madama Duran," as things are now I estimate that \$20 may be paid per acre. If "Quinones" is worth from \$20 to \$25, "Madama Duran" is worth from \$16 to \$20. According to the knowledge he has, that property may have produced from the years 1908 to 1911, supposing that sugar was much cheaper than now, which was not the case, as sugar in 1910 and 1911 was at a price higher than \$4.00. I judge that if now \$20 can be paid per acre, before, at that time, \$15 or \$16 could have been paid. The business that the party in charge has must be taken as a basis. From last year on the property "Madama Duran" has paid twice what is worth its products. So that it has produced as a minimum from \$15 to \$16. The idea the witness has is that it has always been leased as stated.

He knows the property "Los Puentes." It is composed of 36 acres, although he cannot say so with certainty, as he has not seen its measurements, but witness has been there and knows it as one of the properties in litigation. With reference to the property "Los Puentes" and to its production for the years from 1908 on, the witness wishes to be frank. This property was at first planted with pollar and was not cultivated until the year 1910 as there was a belief that it was not so good as the adjoining property; but it was cultivated in part and the land of that property resulted as good as that of "Madama Duran." Last year it produced 50 tons of cane per acre and at some places more than 60 tons have been obtained. I would pay for that property just now if the owners would be willing to lease it the same as for "Islote Quinones" as it has become famous.

Considering the location of the property and his knowledge of the property, the witness thinks that the estimate of the rent from the year 1908 to this date would be at the rate of \$20 per acre. It is not so desirable as the two other properties because it is smaller. No calculation has been made as to that property, but it may produce an average of more than \$400.

Cross-examined by the defendant, the witness answered that he knows that the last mentioned property was not being cultivated; that it contained pollar and it was necessary to clean these out for the planting.

133 X Q. 2. Do you know whether the owners of that property entered into any agreement with another party last year to cultivate it without paying any rent?

A. I myself took part in that business. A member of the family of one of the owners of the property was asked if he wished to plant cocoanut palms; the land was given to him unproductive, nothing was charged him and he could plant cane. He planted a cocoanut grove; he planted at the rate of 75 palms per acre on the condition that nothing should be charged until the crop of ratoons. It happened that he only planted cane and the owners seeing that the fertility was such, made him a present of one thousand dollars for the rescission of the contract, paying him also one dollar for each palm.

Do you know if that was last year? He thinks it was last year, but it was seeded 18 months prior for first crop. Before that time the property was not being cultivated; it was a kind of underbrush, but it was leased together with "Madama Duran."

He does not know whether the property "Los Puentes" was ever leased to the factory or whether it took any part of the lease. Judging by "Berlanga" and "Madama Duran" he knows that each payment made by Pasto Viejo for rent was \$8,000. Some 30 acres were planted in "Los Puentes," there being at present in "Los Puentes" no more than 15 acres.

Answering questions of attorney Rivera Zayas for the opposite party, he said that — is a practicing attorney with an office in Humacao since February 6, 1906. For some seven years he has not given as much attention to his law-office as he should because he has also been engaged in real estate business and divides his time between his law-office and the real estate business. He is a lawyer with considerable practice in Humacao.

During these seven years he has purchased and sold land and put through more than a hundred land deals. He has purchased small parcels of four, five and twenty acres. The land he has purchased and sold have not all been of the same quality. Some was good for cane and some for pasture. Before 1911 he knew "Quinones" because it was famous. He knew it from his boyhood. To speak there where we live of "Quinones" is to speak of the best property in

Humacao, but he came to possess an exact knowledge of it from 1911 on from his personal observations as an expert; therefore he did not know personally any of said three properties until the year 1911. That the dates when the centrals were established in that district were approximately: "San Cristobal" from 1904 to 1905; "Pasto Viejo" from 1903 to 1904. The cane of the said properties were ground at "San Cristobal" and now at the "Fajardo." The "Fajardo" was established in 1903 and 1904.

That from 1908 to 1911 there was a panic in the cane business. The panic was in 1912 when the United States reduced the duty on sugar. In 1911 "Quinones" was planted in tobacco and he thinks that when the lease was made it was for tobacco growing. He knows that the market for sugar also produces a fluctuation in the rent of sugar cane land. He has seen it once. When the sugar tariff was

reduced the rent of land was also reduced. Subsequently all rents were increased on account of the demand. The price is regulated by the demand. "Madama Duran" and "Berlanga" together with the other adjoining property produced \$45,000 of profit. The yearly production of each was fifteen thousand dollars. Witness was not one of the partners, but had some intervention there on account of the absence of one of the partners who sold his share and the witness took part in the liquidation of the partnership. He says so because he himself has done so with respect to the cane and when the cane was being cut people went there, not only from Humacao and adjoining towns, but even from Caguas because the yield was enormous. It has given an average of 55 tons. He did not direct the cutting of the cane there nor was he present at the weighing, but he knows that because he saw the weights when he liquidated the partnership.

The evidence of the plaintiffs having been examined, the defendants introduced their evidence as follows:

Evidence for the Defendants.

In the first place they offer the deed of partition already presented by the plaintiffs as their evidence, that is a copy of deed No. 61 executed in Humacao on August 24, 1912, by notary Manuel Tous Soto, to show that no inclusion was made of said properties in the partition and allotment, so that these properties never
135 were allotted to the plaintiffs. We further wish to show by this evidence that the property called "Zarzal" had been allotted to the widow so that the sale of the property was not made as property of the minors but as a property adjudicated to her. This is the document which appears as already copied in this statement as Exhibit F of the plaintiffs.

It is admitted by the court and marked "Exhibit No. 1" of the defendants.

The plaintiffs asked that the record be made to show their objection to the admission of this evidence for the purposes for which it has been offered, inasmuch as it was made prior to the commencement of this suit which was the reason the court had to refuse to admit it in evidence.

The court overrules the objection of the plaintiffs, first, because it would be most absurd not to admit in evidence their own evidence unless the plaintiffs wish to make this objection against their own evidence. And as to the other objection, which is a reconsideration of the prior ruling of this court, the court after sustaining that ruling for a second time and without thinking that what is now decided may be contrary to what was previously decided, admits this instrument even if it bears a date prior to the commencement of the prior suit, as the court was making reference to the fact that the deed made and presented here as "Exhibit G" of the plaintiffs, in the opinion of the court, has only been presented with the object of showing in this suit that the plaintiffs had made a specific division by aliquot parts of the properties adjudicated in said deeds and that division by aliquot parts was made at a date shown by the instru-

ment which is subsequent to the commencement of the action. This is the reason why the court then stated what it now repeats. The court thinks that in admitting the said instrument as it has been admitted (the former deed of partition) even if it was executed subsequently to the year 1908, when the cause of action arose, the said deed does not contain the details and particulars of a specific donation by aliquot parts, which was the main reason the court had in considering the exhibit which was refused admission.

A new exception is taken by the plaintiffs to the ruling of the court.

The defendants offer in evidence a certificate from the Registrar of Property of Humacao issued on February 3, 1916. The object of presenting this document is to prove all the new matter contained in the third paragraph of the answer.

It is admitted by the court and marked "Exhibit No. 2" of the defendants.

The same document is offered by the defendants to show the awards referred to in paragraph six made by Jose Benitez Diaz and his wife to the several parties who are now in possession of the said properties. The said document also shows the lien existing in favor of the People of Porto Rico on that property.

The plaintiffs say that in so far as there is any reason for its appearance in the Registry they object because the suit is one between third parties.

The document is admitted by the court and plaintiffs take an exception.

This certificate reads as follows:

To the Registrar of Property of Humacao, P. R.

SIR:

I request you to examine the books of that Registry and issue me a certificate concerning the following matters:

1. As to the property No. 454 duplicate of Naguabo, volume 13, folio 141, the text of the first full record of that property, according to the order of the marginal notes of such record, and reference as to all and each of the subsequent records and cautionary notices up to this date, with recital of the marginal notes on each record or cautionary notice. And in case that any segregation has been made from this property, you will also furnish me a certificate as to such segregations in the same manner as to the principal property.

2. As to the property No. 456 duplicate, recorded at folio 242, volume 10 of Naguabo, the same particulars and order as of the property referred to in the foregoing paragraph.

3. As to the property No. 453 duplicate, recorded at folio 24, volume 11 of Naguabo, folio 24, the same matters as of the property referred to in paragraph first of this petition.

San Juan, as for Humacao, January 26, 1916.

HERMINIO DIAZ.

137 I, Raul Benedicto y Geigal, Registrar of Property of Humacao, Porto Rico, certify that on folio 54 of volume 9th of Naguabo there is a first record of property No. 454 which reads as follows:

"Rural property or farm known as 'Los Puentes' situated in the ward of Rio Abajo of the Municipal district of Naguabo, place known as Boca Prieta, composed of 36.2230 cuerdas, equivalent to 14 hectares, 23 ares, 41 centares, bounded by its four cardinal points by lands of Francisco Buso."

According to the date appearing in this office it is not subject to any liens. His Excellency Jose Maria Rios, former resident of this city, appears to be the owner of the property of this number, but it does not appear how he acquired it in the title now presented, and he having died in this city, formerly a town, on April 26, 1871, the corresponding probate proceedings and division of the properties left by him was made, the proper partitioner having made the division of the said property under the order of February 25, 1874, entered in this city, formerly a town, by the Judge of First Instance thereof, Juan Severino Fernandez, in the presence of the scrivener Eugenio de Torres when the said division was approved and there being awarded in the property of this number to Avelina Rios Berrios married to Juan Faura y Clavellas, both of this city, eight acres (8.7465 cuerdas), equivalent to 3 hectares, 3 ares, 7 centares, valued at \$437.32. Wherefore, it appearing that the acquisition was prior to the enforcement of the Mortgage Law in this island under section 20 thereof I record said share in favor of Avelina Rios y Berrios who acquires under title of inheritance. Several other properties are included under the same title of which record has been requested of five shares which are recorded where it is indicated in the attached marginal note. All of the above appears from a copy of the first schedule of Avelina Rios, which was protocolled in this office on March 1st, 1880, in the presence of the scrivener Eugenio de Torres, issued yesterday by the notary of this city Marcelino Estebanez, and of a petition dated today adding circumstances and praying for the record of the said schedule. The presentation, exemptions of the tax and other facts appear from record in full number 1 of property No. 451 made at folio 39 of this same volume to which I refer.

Humacao, September 21, 1898. Fees No. 7, charges \$3.15. Pinol.

138 That the following note appears on the margin of this record:

The other five shares of other five properties referred to in the enclosed record are recorded as indicated in the note on the margin of the entry of presentation, number 840 made at folio 259 reverse, volume 8 of the Journal.

Humacao, September 21, 1898. Pinol.

That in the second record of this property number 454 at folio 54 reverse of volume 9 of Naguabo it is shown that the boundaries of the properties are the following: On the North by lands of Juan Buso and the Blanco river, which separates the Cercado Ramirez from Manuela; on the east by said Blanco river dividing lands of Cercado Ramirez and Francisco Buso at right angle with the river Anton Ruiz; on the south and west by lands of Juan Buso, Manuela Gutman de Lara, widow of Bustelo, records the dominion title without any limitation or usufructuary reserve and by title of compromise by private instrument, by virtue of an order made by the District Court of Humacao on November 16, 1901, which was affirmed by the Supreme Court of Porto Rico by judgment of June 4, 1902.

That the following notes appear on the margin of said second record:

The other properties to which the annexed record refers are recorded as indicated by entry number 457 at folio 168 reverse, volume 11 of the Journal.

Humacao, July 1, 1902. Porrata.

The nullity of the annexed record having been claimed by a suit brought by Maria Rios, widow of Rubio, against the succession of Manuela Gutman et al. according to a marginal note after the record of the property 452 at folio 45 of the present volume to which I refer.

Humacao, June 3, 1908, fees No. 4, charges, 50 cents paid in one internal revenue stamp of this value. J. M. Cuadra.

According to the third record of this number 454 at folio 56 reverse of volume 9 of Naguabo, Victor Burset Masfarrer records in his name this property by purchase from Manuela Gutman de Lara by deed executed in San Juan on April 30, 1920, before notary Herminio Diaz Navarro.

That the following notes appear on the margin of this third record:

139 See as to the other properties the marginal note of entry number 326 volume 11 of the Journal.

Humacao, July 1, 1902. Porrata.

"That in the suit brought by Maria Rios, widow of Rubio, represented by her attorneys, Dexter and Hord, against Victor Burset and others Honorable William H. Holt, Judge of the United States District Court, issued a writ in duplicate to this office for a cautionary annotation of the complaint wherein the nullity of several sales and records is sought including the one regarding this property. The presentation appears from a note on the margin of the third record at folio 42 of this volume. And in the absence of the Registrar I sign in the city of Humacao on November 19, 1903, as District Attorney of this city and by virtue of sections 80 and 270 of the regulations. Campillo.

The nullity of the enclosed record is claimed, as appears from the foregoing enclosed record. Humacao, June 3, 1908.

That according to record four of this property at folio 57, volume 9 of Naguabo, Guillermo Igaravidez Landron records in his name a mortgage lien on the same property in security for the sum of \$30,000, to be paid at the rate of \$10 per year, beginning June 30, 1903, each instalment bearing interest at 9% per annum, only in case of delay, and in which mortgage this property remains liable for the sum of \$1,000 as principal and \$50 for costs, which is created by deed executed in San Juan, on June 30, 1902, before notary Hermino Diaz Navarro.

And the following notes appear on the margin of the aforesaid four record:

See note to entry 459 volume 11 of the Journal. Humacao, July 1, 1902. Cancelled by the number 6 following.
Humacao, September 2, 1902. Porrata.

The second note on the margin of the foregoing third record regarding a lis pendens notice of a complaint filed by Maria Rios, widow of Rubio, against Victor Burset et al., is canceled inasmuch as the District Court of Porto Rico ordered on June 1st of this year its cancellation according to the third note of record four of property 452 at folio 47 reverse of this volume. So it appears from a certificate the presentation of which and other facts appear from 140 said note, to which I refer.

Humacao, June 8, 1908. Fees No. 3, charges, 50 cts. Cuadra."

"That according to record fifth of this property, at folio 57 reverse, of volume 9 of Naguabo, Santiago R. Palmer e Irizarry records this property in his name by purchase from Victor Burset for the price of fifteen hundred dollars and by deed executed in San Juan on June 6, 1902, before notary Herminio Diaz Navarro. That on the margin of said 5th record the following notes appear:

See note of presentation of No. 463, at folio 174, of volume 11 of the Journal.

Humacao, July 7, 1902. Porrata.

The nullity of the said record is claimed as per note of foregoing second record. Humacao, June 3, 1908.

That according to the sixth record of this property at folio 58 of volume 9 of Naguabo, the mortgage created on this property in favor of Guillermo Igaravidez Landron was cancelled, he having received from the owner the amount of the debt as was shown by deed executed in San Juan on August 26, 1902, before notary Herminio Diaz Navarro.

That the following note appears on the margin of this record:

See entry number 550 of volume 11 of the Journal.

Humacao, September 2, 1902. Porrata.

That according to the seventh record of this property, at folio 58, reverse, of volume 9 of Naguabo, Victor Bursset Masferrer, as attorney in fact of the owner of this property Santiago R. Palmer and of his wife Carlota Romaguera, created a voluntary mortgage on this property and others in favor of the Attorney General as representative of The People of Porto Rico for the sum of five thousand dollars to secure the notaries public Juan Hernandez Lopez and Rafael Lopez Landron in the discharge of their duties, this property being liable for the sum of one thousand dollars which, together with another of fifteen hundred dollars, serves as guaranty for Lopez Landron, the said mortgage having been created by deed executed in San Juan on October 17, 1902, before notary Mauricio Guerra Mondragon.

The following notes appear on the margin of this seventh record:

See seventh record at folio 48 and 53 reverse of this volume.
Humacao, October 23, 1902. Porrata.

141 See note for nullity on the margin of the foregoing third record. Toro Rios.

That according to the eighth record of this property 454, duplicate, at folio 140 of volume 13 of Naguabo, Santiago R. Palmer and his wife, Catalina Romaguera Avila, sell this property and others to Manuel Gonzalez y Fernandez, married, of age, property owner and resident of Rio Grande, all for the sum of thirty thousand dollars, this property having been appraised at one thousand and one hundred dollars, the said sale having been made by deed executed in San Juan on August 6, 1904, before notary Julio Cesar Gonzalez as notary substitute for Santiago R. Palmer.

That the following appears on the margin of this eighth record:

As to the other properties to which the enclosed record refers, see note on the margin of entry number 817, at folio 298, reverse, of volume 14 of the Journal.

Humacao, June 9, 1908.

That on folio 140, reverse, of volume 13 of Naguabo, is record 9th of this property number 454, duplicate, which reads as follows:

Rural property or farm known as "Los Puentes" described in the first and second records thereof the same as in the document presented.

It appears subject to a mortgage, together with two other properties, in favor of the attorney general of this island for the sum of five thousand dollars, according to its foregoing seventh record and to a lis pendens notice of a complaint filed by Maria Rios, widow of Rubio, according to the note on the margin of the second record. This property appears recorded in favor of Manuel Gonzalez y Fernandez by purchase from Santiago R. Palmer and his wife, as per its foregoing eighth record. Manuel Gonzalez y Fernandez, former resident of Rio Grande, died in the town of Mameyes Segundo of this district on March 19, 1904, leaving a will executed on the 17th of the same month and year before notary Santiago R.

Palmer by virtue of which, and among other statements regarding the designation of executors and a partitioner and declaration of the estate, he instituted as his sole and universal heirs in equal portions his six children of his sole marriage to Clementina Lugo Calzada named Maria, Manuela, Aristides, Manuel, Carlota and

142 Clementina Gonzalez Lugo and his said wife Clementina Lugo Calzada in that part allowed her by the law, he having declared also that all his property belongs to the conjugal partnership among which is this property as to which this record pro indiviso is sought in favor of said succession of Gonzalez and in the other particulars as appear in the eighth full record of property 452 duplicate at folio 19 of volume 11 of Naguabo. Wherefore, Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo record in their names and pro indiviso this property by title of testate inheritance. In one of the documents are included several other properties which appear as indicated in the marginal note. The presentation of the documents and other facts appear from the said full record, to which I refer.

Humacao, June 12, 1908. Fees No. 5, charges \$4.50. Paid in one of \$3 and one of \$1, and one of 50 cts. J. M. Cuadra.

That the following appears on the margin of this ninth record:

As to the other properties to which the enclosed record refers, see the note of entry 818, at folio 299, volume 14, of the Journal.

Humacao, June 12, 1908.

That the documents whereby the said ninth record was made and which in the same record is said that they appear from the eighth record in full of property 452 duplicate at folio 19 of volume 11 of Naguabo as follows: A copy of the will made on August 17th, 1904, before notary of San Juan Santiago R. Palmer; certificate of the death of Manuel Gonzalez y Fernandez issued by Luis Sanchez Vahamonde, Municipal Secretary in charge of the Civil Registry of Rio Grande, on June 3, 1908; a writing signed by Carlos Julia Davila on June 5th, 1908, requesting the record pro indiviso in favor of the succession of Gonzalez of the properties belonging to the predecessor Gonzalez y Fernandez and a certificate issued by the Treasurer of Porto Rico on June 8th, 1908, regarding exemption from the payment of taxes on the inheritance and property left by Gonzalez.

That on folio 141 of volume 13 of Naguabo appears the tenth record of this property number 454, duplicate, which reads as follows:

Rural property or farm known as "Los Puentes" described in its foregoing first and second records same as in the document presented.

143 It appears subject to such encumbrances and liens as indicated by its foregoing records and annotations. This property appears recorded in the name of Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, pro indiviso, and by inheritance from Manuel Gonzalez y Fernandez, as appears from the foregoing ninth record. Clementina Lugo y Calzada in her own right and in the names of her minor daughters, with the previous authorization of the District Court of San Juan; Maria and Manuela Gonzalez y Lugo being the minor daughters of Clementina Lugo y Calzada; Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, all residents of Rio Grande, sold to Jose J. Benitez Diaz, resident of Vieques, this property and two others all for the price of seventeen thousand and six hundred dollars, the value and price of each property not being stated separately, as more fully appears from the ninth full record of property 456 duplicate, at folio 242, reverse, of volume 10 of this Municipality. Wherefore, Jose J. Benitez records in his name the property of this number by title of purchase. The document includes two other properties which are recorded as indicated in the marginal note. The aforesaid appears from the copy of a deed executed in San Juan before notary of this city Antonio de Aldrey Montolio, and from a certificate issued by the clerk of the District Court of San Juan and signed by A. Marin Marien, deputy clerk of the said court, the presentation of which and other facts appear from the said record in full, to which I refer.

Humacao, June 18, 1908. J. M. Cuadra.

That the following notes appear on the margin of this tenth record:

As to the other two properties to which the enclosed record refers, see the entry of presentation No. 28, at folio No. 9 reverse, of volume 15 of the Journal. Humacao, June 18, 1908.

The nullity of the enclosed record having been claimed as well as of the several records of other properties by Aristides Gonzalez Lugo in his own right and as guardian ad litem of the minors Manuel, Carlota and Celementina Gonzalez y Lugo, against Jose J. Benitez Diaz and his wife, Carlota Sampayo Guzman, Clementina Lugo Calzada, Maria and Manuela Gonzalez y Lugo, Prudencio Eugui y Barriola and Diego Garcia y Ortega, the said nullity of records and other matters in the District Court of Ponce by complaint
144 filed before the District Court of Ponce on September 8th of the current year. The aforesaid appears from a lis pendens notice signed in Ponce on September 8th, 1913, by attorney Alberto S. Poventud wherein appears a certificate bearing the same date from the clerk of said court, Jose Rosario Gelpi, signed by the deputy clerk, B. Sanchez Montalvo, wherein it appears that on the same date was filed in said court the said complaint, the said document having been presented in this Registry on the 11th of September, instant, at 3.50 o'clock p. m., as shown by entry No. 88 of folio 35, reverse, of volume 20 of the Journal. As to the other properties, see the said entry of presentation. I file a duplicate of it in the roll

of public papers under No. 110 and sign this in Humacao this 15th day of September, 1913. Planellas.

That the eleventh and last record of this property No. 454 duplicate appears at folio 142 of volume 13 of Naguabo, which reads as follows:

"Rural property or farm called 'Los Puentes' and described in its first record same as in the document presented with the only difference that in the latter it is said that its boundaries by its four cardinal points are lands of Francisco Buso, are now of Jose J. Benitez.

It appears subject, together with two other properties, to a mortgage of five thousand dollars in favor of the Attorney General of Porto Rico according to the foregoing record; to a lis pendens notice filed by Maria Rios, widow of Rubio, against the succession of Manuela Gutman et al., according to a note on the margin of the foregoing second record; and to another lis pendens notice of a complaint filed by Aristides Gonzalez Lugo in his own right and as guardian ad litem of minors Manuel, Carlota and Clementina Gonzalez y Lugo against Jose J. Benitez Diaz et al., as shown by a note on the margin of the foregoing tenth record; but as shown by the document alone it is subject only to the charge last mentioned, Jose J. Benitez having recorded in his name this property which he acquired by purchase from the succession of Manuel Gonzalez according to the foregoing tenth record and by virtue of such title Jose J. Benitez, a resident of Vieques, in his own right and as attorney in fact of his wife Carlota Sampayo Guzman, sold this property and two others by deed executed in Humacao on September 2, 1914, before notary Francisco Gonzalez Fagundo to Manuel Rodriguez Gonzalez, unmarried, Jose R. Fuertes, married, to 145 Mercedes Garzot, and Faustino R. Fuertes, Jr., married to

Carmen Garzot, residents of Naguabo, all for the price of forty-two thousand, five hundred dollars, payable in the following manner: eight thousand dollars cash that the seller received and for which he gave receipt; nine thousand and five hundred dollars that the purchasers will pay within the period running from today (date of the said deed) to September 30, 1914, furnishing in the meantime for said sum a promissory note duly executed, and twenty thousand dollars that the purchasers reserved to pay in due time the mortgages on the two other properties sold and of the said total sum, for the purpose of the Mortgage Law, was assigned to this property, one thousand and eighty-six dollars, sixty-nine cents, or at thirty dollars per acre, with the conditions as shown by the fifteenth record in full, of property No. 136, quadruplicate, at folio 127 reverse of volume 11 of Naguabo. Wherefore, Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr., record in their names in equal portions the property of this number by title of purchase. The other two properties are as indicated by the marginal note. The presentation of the documents and other facts are shown by the said full record, to which I refer.

Humacao, April 27, 1915. Planellas.

Humacao, April 27, 1915. Planellas.

That the following note appears at the margin of this tenth record:

As to all the properties see note at the margin of entry of presentation 581 at folio 248 of volume 21 of the journal.

Humacao, April 27, 1915. Planellas.

That the first record of property 456 is at folio 64 of the 9th volume of Naguabo and reads as follows:

Rural property called "Quinones" situated in the ward of Rio Abajo of the Municipal district of Naguabo, composed of 88.950 cuerdas, equivalent to 34 hectares, 96 ares, bounded on the north by lands of Eladio Saldana; on the east by those of Rodulfo Maldonado, and on the south and west by other lands of the succession of Jose Maria Rios, and at present on the north by Ramon Villamil and Marcelino Borges; on the east by Faustino R. Fuertes and Jesus Pereyo; on the south by lands of succession of Jose Maria Rios and Arturo Galardo, and on the west by other lands of said Gallardo and Ramon Villamil.

146 According to its antecedents it is not subject to any lien. His Excellency Jose Maria Rios, former resident of this city, appears to be the owner of the property of this number without being shown the acquisition in the title now presented, and he having died in this city formerly a town, on April 26, 1871, the corresponding probate proceedings and division of the estate left by him was made, the partitioner having carried out the partition by virtue of the order of February 25, 1874, made by the Judge of First Instance of said city, formerly a town, Joaquin Ceferino Fernandez, before the scrivener Eugenio de Torres; the partition was approved and in the property of this number was awarded to Avelina Rios y Berrios, married to Juan Faura y Cladellas, both residents of this city, 22.239 cuerdas, equivalent to 8 hectares, 64 ares, 8 centares, valued at two thousand seven hundred and sixty-nine pesos seventy-one cents. Wherefore, and it appearing that it was by acquisition prior to the extension of the Mortgage Law to this island, under section 20 thereof, I record the said shares in favor of Avelina Rios y Berrios who acquires by title of inheritance. Several other properties are included in the same title of which record of five shares has been requested which are recorded as shown by the annexed marginal note. All the foregoing appears from the first copy of the Schedule of Avelina Rios, protocolled in this Notarial office, on March 1st, 1880, before the scrivener Eugenio de Torres, issued yesterday by the notary of this city Marcelino Estevanez, and of a petition furnishing additional facts of this date and requesting the record of said Schedule. The presentation, exception of taxes and other facts are shown by the record in full No. one, of property No. 451, at folio 39 of this volume, to which I refer.

Humacao, September 21, 1898. Pinol.

That the following note appears on the margin of this first record:

The other five shares of other five properties to which the enclosed record refers are recorded as indicated by the note on the margin of

the entry of presentation No. 840, at folio 259 reverse, of volume 8 of the Journal.

Humacao, September 21, 1898. Pinol.

That according to the second record of this property No. 456, which appears at folio 64 reverse, of volume 9 of Naguabo
147 the boundaries thereof are as follows: On the north by the river Viejo, which separates it from lands of Manuela Gutman; on the east by lands of the succession of Ramon Argueso, formerly Cecilio Rodriguez; on the south by the river Blanco of Naguabo which separates it from lands of the succession of Jose Rios y Berrios and on the west by the said river, the farm Mulas and Cercado Torres. The title of dominion of same is recorded by Manuela Gutman de Lara, widow of Bustelo, without any limitation or usufructuary reserve and by title of compromise in a private document, by virtue of an order of the District Court of Humacao of November 16, 1901, which was affirmed by the Supreme Court of Porto Rico by a judgment of June 4, 1902. That the following note appears at the margin of this second record:

The nullity of the annexed record is claimed by suit brought by Mario Rios, widow of Rubio, against the succession of Manuela Gutman et al., according to the last marginal note on the margin of the second record of property No. 452, at folio 45 of this volume, to which I refer.

Humacao, June 3, 1908. Cuadra.

That according to the third record of this property No. 456 at folio 66 reverse, volume 9 of Naguabo, Victor Burset Masferrer records in his name this property by purchase made from Manuela Gutman de Lara, by deed executed in San Juan on April 30, 1902, before notary Herminio Diaz Navarro.

The following annotation appears at the margin of the third record:

See marginal note of entry No. 236, volume 11 of Journal.

Humacao, July 1, 1902. Porrata.

In the suit brought by Maria Rios de Rubio against Victor Burset et al. Hon. William H. Holt of the United States District Court issued a duplicate writ to this office for the annotation of the filing of this complaint wherein the nullity of several sales and records is sought among which is that of this number. The presentation appears by the annotation of the third record at folio 42 of this volume. And on account of the incapacity of the regular Registrar, I as prosecuting attorney of this city, section 80 and 272 of the Rules, sign this in Humacao, on November 19, 1903. Campillo.

148 The nullity of the enclosed record is claimed as shown by a note on the margin of the second record of this property.
Humacao, June 3, 1908. Cuadra.

The second note on the margin of the annexed record is cancelled by reason of the order of the United States District Court for the

District of Porto Rico made on the first instant for its cancellation, as appears from the third note on the margin of the fourth record, property No. 452, folio 47 reverse, volume 9 of Naguabo. It so appears from the certificate of the presentation of which and other facts are shown in said note, to which I refer.

Humacao, June 8, 1908. Cuadra.

That according to the fourth record of this property number 456 duplicate at folio 239 of volume 10 of Naguabo, Guillermo Igaravidez Landron records in his name his mortgage right on the said property to secure the sum of thirty thousand dollars, to be paid at the rate of ten thousand dollars yearly, beginning June 30, 1903, each installment bearing interest at 9 per cent per annum only in case of delay, the property being held by reason of said mortgage liable for the sum of two thousand dollars as principal and fifty dollars for costs, said mortgage having been created by deed executed in San Juan on June 30, 1902, before notary Herminio Diaz Navarro.

That the following notes appear on the margin of this fourth record:

Humacao, July 1, 1902. Porrata.

See note on the margin of entry of presentation No. 459, of volume 11 of the Journal.

Cancelled by the next sixth record.

Humacao, September 2, 1902. Porrata.

That according to the fifth record of this property at folio 239, reverse, of volume 10 of Naguabo, Santiago R. Palmer Irizarry records in his name this property by purchase from Victor Burset Masferrer for the sum of four thousand and four hundred dollars, and by deed executed in San Juan on July 6, 1902, before notary Herminio Diaz Navarro. That the following notes appear on the margin of this fifth record:

See entry of presentation No. 463, at folio 174 of volume 11 of the Journal. Humacao, July 7, 1902.

149 The nullity of the enclosed record is claimed as shown by a note on the margin of the second record of this property.

Humacao, June 3, 1908.

That according to the sixth record of this property at folio 240, volume 10 of Naguabo, the mortgage created upon this property in favor of Guillermo Igaravidez Landran was entirely cancelled, the said Landran having received from the owner thereof the sum of the debt, as was shown by deed executed in San Juan on August 26, 1902, before notary Herminio Diaz Navarro.

The following notes appear on the margin of this sixth record:

See marginal note of entry No. 550 of volume 11 of the Journal. Humacao, September 2, 1902. Porrata.

See the note regarding the nullity on the margin of the foregoing third record. Toro Rios.

That annotation letter "A" of this property No. 456 duplicate is at folio 240 reverse of volume 10 of Naguabo, which reads as follows:

Rural property or farm called "Islote Quinones," described in its foregoing first and second records the same as in the document presented. It appears subject to a lis pendens notice filed by Maria Rios, widow of Rubio, in the Federal Court, praying for the nullity of several records regarding this property and others. This property appears recorded in the name of Santiago R. Palmer Irizarry by purchase from Victor Burset Masferrer, according to its foregoing sixth record. In the suit brought in the District Court of San Juan by Frank Antonsanti y Capo against the succession of Manuel Gonzalez wherein the sum of one thousand, two hundred and fifty dollars was claimed as principal, two hundred dollars for interest, plus costs, an order of attachment was levied on the property of the defendant succession for the effectiveness of the judgment that might be rendered and in pursuance thereof the marshal made an attachment on this and other properties as fully appears from the record in full letter "A" of property 453 duplicate at folio 22 of volume 11 of Naguabo. This property shall be held liable for the half of the principal and all the costs. Wherefore, and it being observed that the property is recorded in the name of a third person, I refuse to make a cautionary notice as prayed and instead I make a note of suspension for 120 days as required by the law in favor of Frank Antonsanti y Capo. The presentation of the document and other facts appear from the said annotation in full, to which I refer. I file a duplicate of the writ presented in its proper file under No. 3. Humacao, May 5, 1908. Cuadra.

That the following notes appear on the margin of this annotation letter "A" which read as follows: As to the other property to which the enclosed annotation refers, see at folio 22, volume 11 of Naguabo.

Humacao, May 5, 1908.

The said annotation is cancelled, there having elapsed the 120 days for which term it was taken without any correction of defects having been made. Humacao, March 20, 1910.

That according to the seventh record of this property at folio 241 of volume 10 of Naguabo, Santiago R. Palmer, and his wife, Catalina Romaguera y Avilla, sell this property and others to Manuel Gonzalez Fernandez, married, of age, property owner and resident of Rio Grande, all for the price of thirty thousand dollars, this having been valued at two thousand and four hundred and fifty dollars, the said sale having been made by deed executed in San Juan on August 6, 1904, before notary Julio Cesar Gonzalez as substitute notary for Santiago R. Palmer.

The following note appears on the margin of this seventh record:

As to the other properties to which the enclosed record refers, see note on the margin of entry No. 817, at folio 298, reverse, volume 14 of the Journal. Humacao, June 9, 1908.

That the eighth record of this property No. 456 duplicate is at folio 241 reverse, volume 10 of Naguabo, which reads as follows:

Rural property or farm called "Islote Quinones" described in its foregoing first and second records the same as in the document pre-

sented. It appears subject to a *lis pendens* notice of a complaint filed in the District Court of this city by Maria Rios, widow of Rubio, against the succession of Manuela Gutman et al., as appears from the note on the margin of said second record and to an annotation of an attachment in favor of Frank Antonsanti y Capo, which was refused as appears from the foregoing annotation letter "A." This property

151 appears recorded in the name of Manuel Gonzalez Fernandez by purchase from Santiago R. Palmer and his wife, Catalina Romaguera, according to the foregoing seventh record. Manuel Gonzalez Fernandez, a former resident of Rio Grande, died on the 19th of August, 1904, leaving a will executed on the 17th of the said month and year, by virtue of which and among other declarations he designated as his sole and universal heirs in equal portions his children born by his only marriage to Clementina Lugo y Calzada, named Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo and his said wife Clementina Lugo Calzada in the portion allowed her by the law, having also declared that all the property belongs to the conjugal society, among which is this property, as to which and according to a writing presented record *pro indiviso* thereof is sought in favor of the members of said succession of Gonzalez in the terms which fully appear by the eighth record in full of the property No. 452 duplicate, at folio 19 of volume 11 of Naguabo, wherefore, Clementina Lugo y Calzada and her children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Fernandez record in their names the title of dominion *pro indiviso* of the property of this number, by title of inheritance. In one of the documents presented are included five other properties which are recorded as indicated in the marginal note. The presentation and other facts appear from said full record, to which I refer. Humacao, June 12, 1908. J. M. Cuadra.

That the following note appears on the margin of this eighth record:

As to the other properties, see note of entry of presentation No. 818, at folio 299, of volume 14 of the Journal. Humacao, June 12, 1908.

That the ninth record of this property No. 456 duplicate is at folio 242, reverse, of volume 10 of Naguabo, which reads as follows:

Rural property or farm called "Islote Quinones" described in the foregoing first and second records the same as in the document presented. It appears subject to such charges and liens as are shown by its foregoing records. This property appears recorded *pro indiviso* in the name of the succession of Manuel Gonzalez y Fernandez; the said succession is composed of Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, as shown in the foregoing eighth record. The said Clementina Lugo y Calzada, widow, property owner, fifty years of age
152 and resident of Rio Grande, in her own right and as mother with patria potestas over her unemancipated minor children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo and hav-

ing been authorized by the District Court of San Juan by order of May 27 last past, Maria Gonzalez y Lugo, married, property owner, twenty-three years old and resident of Rio Grande and Manuela Gonzalez y Lugo, married, property owner, twenty-one years old, sell this property and others acquired by inheritance from Manuel Gonzalez Fernandez together with two other properties to Jose J. Benitez Diaz, property owner, forty-two years old, married to Carlota Sampayo Guzman and a resident of Vieques, all for the sum of seventeen thousand six hundred dollars, without making express mention of the value of each, the sellers confessing having received the said sum to their satisfaction and warranting the title. Wherefore, Jose J. Benitez Diaz records in his name the dominion title to the property of this number by title of purchase. The foregoing appears from a copy of a deed executed in San Juan on June 5, 1908, before the notary of this city Antonio de Aldrey Montolio and from a certificate issued by A. Marin Marien, deputy clerk of the District Court of San Juan, wherein is included the order of the court mentioned in the record whereby authorization is granted for the sale of this property and others, the said documents having all been presented at volume 15 of the Journal, at 1.30 o'clock yesterday, as shown by the entry of presentation No. 28 at folio 9 reverse. And the foregoing statement being in conformity with the registry and documents presented, and pointing out that the other two properties appear as indicated in the marginal note, I sign this in Humacao, June 18, 1908, J. M. Cuadra.

That the following notes appear on the margin of this ninth record:

As to the other two properties, see the note on the margin of entry of presentation, No. 28, at folio 9 reverse, of volume 15 of Journal. Humacao, June 18, 1908.

The nullity of the annexed record and the following and that of the several records of other properties in the suit for nullity and other reliefs brought in the District Court of Ponce by Aristides Gonzalez y Lugo in his own right and as guardian ad litem of the minors

Manuel, Carlota and Clementina Gonzalez y Lugo against Jose 153 J. Benitez and his wife Carlota Sampayo y Guzmanfi Clementina Lugo y Calzada, Maria and Manuela Gonzalez y Lugo, Prudencio Eugui y Barriola and Diego Garcia Ortega, as shown by note on the margin of the tenth record of property No. 454, duplicate, at folio 141 of volume 13 of Naguabo, to which I refer.

Humacao, September 15, 1912. Planellas.

That by the tenth record of this property at folio 173 reverse, of volume 13 of Naguabo, the owner thereof, Jose J. Benitez Diaz, in his own right and as attorney in fact of his wife Carlota Sampayo Guzman, leased the said property to Prudencio Eugui y Barriola for the period of ten years from February 15, 1910, for the rent of two thousand dollars yearly, the said contract having been witnessed by a deed executed in San Juan on March 18, 1910, before notary of Humacao, Antonio de Aldrey.

The following note appears on the margin of the tenth record:

The nullity of the enclosed record is claimed, as shown by the note on the margin of the ninth record of this property. Humacao, P. R., September 15, 1913.

That the record eleventh of this property No. 456, duplicate, appears at folio 174, reverse, of volume 13 of Naguabo, which reads as follows:

Rural property called "Islote Quinones" described in its foregoing first and second records the same as in the document presented. It appears subject to a contract of lease in favor of Prudencio Eugui y Barriola for the period of ten years, as shown by the foregoing tenth record. Jose J. Benitez Diaz, resident of Vieques, 47 years of age, married and property owner, has recorded this property in his name which he acquired by purchase from the succession of Gonzalez, as appears from the foregoing ninth record and by virtue of said title the said Jose J. Benitez Diaz, in his own right and as attorney in fact of his lawful wife Carlota Sampayo, the latter a property owner and of age, whose capacity she has already shown in this registry, creates a first voluntary and special mortgage on this property and another in favor of Diego Garcia Ortiz, resident of Rio Piedras, property owner, of age, and married to Genoveva Andino Sola, represented in this act by his attorney in fact, Francisco Robledo y Garcia, unmarried, property owner, 38 years of age and resident of Rio Piedras, the said mortgage to secure a loan in favor of said Garcia Ortega for the sum of \$15,000, which the debtor Benitez shall return on the 7th of June 1915, in the town of Rio Piedras, the said sum to bear interest at the rate of 12 per cent yearly, to be paid every three months in advance, it being agreed that besides the sum of \$15,000 and the interest amounting to three hundred dollars the said mortgage will also secure an additional sum of \$1,500, estimated for costs, expenses and attorneys' fees in case of foreclosure; this property shall be held liable for the sum of ten thousand dollars, principal, one thousand and one hundred dollars for interest and seven hundred and fifty dollars for costs and attorney fees. The parties stipulate that in case of default in payment on the part of the debtor of the interest of two successive instalments of three months each the debt will become due, and the creditor shall proceed to collect the same either in a friendly manner or by resort to the court. The parties also state that Benitez may make payment of the whole amount of the debt or a part thereof before it becomes due provided he notify the creditors a month in advance and pay as indemnity 2 per cent of the sum paid. Wherefore Diego Garcia Ortega records in his name his mortgage right on this property. The document includes other record as indicated in the marginal note. The foregoing appears from a copy of a deed executed in June, 1913, before notary of Humacao Francisco Gonzalez Fagundo, presented in this registry at 9 o'clock A. M., on the 15th instant, as shown by entry number 661 at folio 279, reverse, of volume 19 of the Journal. And

it being in conformity with the registry and document referred to, I sign this on July 19, 1913. Miguel Planellas.

That the following notes appear on the margin of the 11th record:

As to the other record referred to in the annexed record, see folio 33 of volume 13 of Naguabo.

Humacao, July 19, 1913. Planellas.

The nullity of the annexed record is claimed as shown by the note on the margin of the 9th record of this property.

Humacao, September 15, 1913. Planellas.

That the 12th record of this property number 456 triplicate appears at folio 176 of volume 13 of Naguabo and reads as follows:

155 Rural property called "Islote Quinones" described in its foregoing first and second records the same as in the document presented, it being made to appear in the said document that besides Rio Viejo it is bounded on the north by lands of Santiago R. Palmer and the Cereado Torres, now of Petronila Patricia Rios, and on the east by lands of Carmen Fuertes. It appears subject to the following encumbrances: a contract of lease in favor of Prudencio Eugui y Barriola for the term of ten years, as shown by the foregoing tenth record; to a mortgage, together with other properties, in favor of Diego Garcia Ortega for the sum of \$15,000, with interest at the rate of 12 per cent yearly, this property remaining liable in the sum of \$10,000 as principal, \$1,100 interest, and \$750 for the payment of costs and attorney fees as shown by the foregoing eleventh record; and to a lis pendens notice of a complaint filed by Aristides Gonzalez y Lugo in its own right and as guardian ad litem of the minors Manual, Carlota and Clementina Gonzalez y Lugo in the District Court of Ponce, wherein they claim the nullity of several records of this property and others as shown by a note on the margin of the 9th record. Jose J. Benitez Diaz has recorded in his name the property of this number which was acquired by purchase from Clementina Lugo y Calzada and her children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, as appears from the foregoing 9th record, and by virtue of said title the said Jose J. Benitez Diaz, married, property owner, of age, and a resident of San Juan, in his own right and as general attorney in fact of his wife, Carlota Sampayo Guzman, property owner and of age, whose character she has already proved in this registry, sells the property of this number to Cristina Alvarez y Garriga, married, property owner, of age and resident of Naguabo, represented in this act by her agent and husband, Juan Noguera Pedroza, of age, married, property owner, and resident of Naguabo, for the sum of \$14,000, of which the purchaser Alvarez Garcia reserves the sum of \$10,000, which is the amount of the mortgage debt constitute on the property to make payment to the creditor Diego Garcia Ortega, and the remaining \$4,000, were delivered by Noguera to Benitez Diaz at the execution of the deed in the presence of the notary and witnesses by a check against Messrs.

Korber & Co. of San Juan, which Benitez Diaz receives in cash, warranting the title. Wherefore, Cristina Alvarez Gar-
 156 riga records this property of this number in her name by title of purchase. The foregoing appears from a copy of a deed executed in Humacao on October 3, 1913, before notary Francisco Gonzalez Fagundo, presented in this registry at 10.30 A. M., of October 6th instant, as shown by entry number 146 at folio 62 of volume 20 of the Journal. And it being in conformity with the registry and document referred to I sign this in Humacao, on October 11th, 1913, Planellas.

That the first record of the property No. 453 is at folio 49 of volume 9 of Naguabo and reads as follows:

1st. Rural Property.—Lands called "Madama Duran" situated in the place known as "Los Puentes" in the ward of Rio Abajo of the municipal district of Noguabo, composed of 107 cuerdas, equivalent to 42 hectares, 13 ares, 92 centares, bounded on the north, formerly, by other lands of succession of Jose Maria Rios, on the east and south by other lands of Francisco Buso, and on the west by other lands of Pedro Lebron, the western boundary having changed, it being bounded now on the west by lands of succession of Ramon Argueso.

Under the description made the said property is not subject to any liens. His Excellency Jose Maria Rios, formerly a resident of this city, appears to be the owner of the property of this number, the title now presented not showing its acquisition, and the said Rios having died in this city, formerly a town, on April 26, 1871, a partition and division of the property left was made, the division having been made by the purchaser. In view of the order made on February 27, 1874, in this city, formerly a town, by the judge of first instance of the said city, Joaquin Ceferino Fernandez, before the scrivener Eugenio de Torres, the partition was approved and the property of this number then was adjudged to Avelina Rios y Berrios, married to Juan Faura y Cladellas, both residents of this city, 21.8349 cuerdas, equivalent to 8 hectares, 58 ares and 34 centares, valued at one thousand and three hundred dollars and sixteen cents, and also 5.312 cuerdas, equivalent to 2 hectares, 8 ares, 78 centares, valued at two hundred and one dollars and twenty-five cents. Wherefore I record in the name of Avelina Rios y Berrios her share in the prop-
 157 erty of this number, which she acquires by title of inheritance, since the acquisition is prior to the extension of the Mortgage Law to this island, according to section 20 of the said law.

Several other properties are included in the same title of which record is requested as to five shares which are recorded as indicated in the enclosed margin note. The foregoing appears from the first copy of the Schedule of Avelina Rios protocolled in this notarial office on March 1st, 1880, in presence of the scrivener Eugenio de Torres, issued yesterday by notary Marcelino Estevanez, and from a petition of this date furnishing additional data and praying for the record of the said Schedule. The presentation, exemption of taxes and other

facts appear from the full records, number one of number 451, at folio 39 of this volume, to which I refer.

Humacao, September 21, 1908. Pinol.

That the following note appears on the margin of this first record of this property number 453:

The other five shares of other five properties to which the enclosed record refers is recorded as indicated in the note on the margin of entry of presentation 840, at folio 250 reverse, volume 8 of Journal.

Humacao, September 21, 1898. Pinol.

That in the second record of this property No. 453 at folio 49, reverse, of volume 9 of Naguabo, appears a difference in its area, which, as said therein, is of 107.468 cuerdas, equivalent to 42 hectares, 24 ares, bounded on the north by the Blanco river, which separates it from Cercado Ramirez of Manuela Gutman and part of the lands of the succession of Ramon Argueso, formerly of Pedro Lebron; on the east in part by said Blanco river which separates it from said Cercado Ramirez and part of the lands of Juan Buso; on the south by lands of said Buso, and on the west by those of the succession of Ramon Argueso, formerly of Pedro Lebron. Manuela Gutman de Lara, widow of Bustelo, record the dominion title without limitation or usufructuary reserve by title of compromise in a private document, by virtue of an order made by the District Court of Humacao on November 16, 1901, affirmed by a judgment of the Supreme Court of Porto Rico of June 4, 1902.

That the following notes appear on the margin of this second record:

The other properties to which the annexed record refers are recorded as indicated in the note on the margin of the entry of presentation, number 457, at folio 168, reverse, of volume 11 of the Journal.

Humacao, July 19, 1902. Porrata.

The nullity of the said record is claimed in the suit brought by Maria Rios, widow of Rubio, against the succession of Manuela Gutman et al., as shown by a note on the margin of the second record of property 452, at folio 45 of this volume, to which I refer.

Humacao, June 3, 1908. Cuadra.

That according to the third record of this property at folio 51 reverse, of volume 9 of Naguabo, Victor Buset Masferrer records in his name this property by purchase from Manuela Gutman de Lara, by a deed executed in San Juan on April 30, 1902, before notary Herminio Diaz Navarro. That the following note appears on the margin of this third record:

In the suit brought by Maria Rios, represented by her attorneys Dexter & Hord, against Victor Buset et al., Hon. William H. Holt, Judge of the United States District Court, issued a writ in duplicate to this office for a cautionary notice as to the filing of said complaint wherein a declaration of nullity of several sales and records is sought,

among which this property is included. The presentation and other facts appear from the marginal note placed on the record number 3 at folio 42 of this volume. And due to the incapacity of the regular registrar and by virtue of the provisions of sections 80 and 270 of the Regulations, I, fiscal of this city, sign this in Humacao on November 19, 1903. Campillo.

The nullity of the enclosed record is claimed as shown by a note on the margin of the foregoing second record. Humacao, June 3, 1908.

That according to the fourth record of this property at folio 52 of volume 9 of Naguabo, Guillermo Igaravidez Landron records in his name a mortgage lien on the said property to secure the sum of thirty thousand dollars to be paid at the rate of ten thousand dollars yearly, beginning June 30, 1903, each instalment bearing interest at 9 per cent per annum, only in case of any delay, this property remaining liable by reason of said mortgage for the sum of four thousand dollars as principal and two hundred dollars for costs, which is the
159 same mortgage that was created by deed executed in San Juan on June 30, 1902, before notary Herminio Diaz Navarro.

That the following notes appear on the margin of this fourth record:

See the note of entry No. 459 of volume 11 of the Journal, for the other properties.

Humacao, July 1st, 1902. Porrata.

Cancelled by record number six following: That first note on the margin of the foregoing third record with regard to a lis pendens notice of a complaint filed by Maria Rios de Rubio against Victor Bursset et al., is cancelled and invalidated in view of the order of the United States District Court for Porto Rico of the 1st instant, ordering its cancellation, as shown by the third note on the margin of the fourth record of property No. 452 at folio 47, reverse, of this volume. So it appears from a certificate the presentation of which and other facts are shown by the said note, to which I refer.

Humacao, June 8, 1908. Cuadra.

That according to the fifth record of this property at folio 52 of volume 9 of Naguabo, Santiago R. Palmer Irizarry records this property in his name by purchase from Victor Bursset y Masferrer for the sum of three thousand, seven hundred and fifty dollars by a deed executed in San Juan on June 6, 1902, before notary Herminio Diaz Navarro.

That the following notes appear on the margin of this fifth record:

See note to entry of presentation number 463 at folio 174 of volume 11 of the Journal.

Humacao, July 7, 1902. Porrata.

The nullity of the annexed record is claimed as shown by a note on the margin of the foregoing second record.

Humacao, June, 1908. Cuadra.

That according to the sixth record of this property at folio 53 of volume 9 of Naguabo, the mortgage on this property in favor of Guillermo Igaravidez Landron was totally cancelled, the owner thereof having received the sum of the debt as was shown by deed executed in San Juan on August 23, 1902, before notary Herminio Diaz Navarro.

That according to the seventh record of this property at 160 folio 53 of volume 9 of Naguabo, Victor Bursat y Masferrer, as attorney in fact of the owner of this property, Santiago R. Palmer and of his wife, Catalina Romaguera, created a voluntary mortgage on this property and others in favor of the Attorney General of Porto Rico as representative of The People of Porto Rico for the sum of five thousand dollars to answer for the proper exercise of their duties as notaries public of Juan Hernandez Lopez and Rafael Lopez Landron, this property to respond for the sum of one thousand and five hundred dollars together with other property which also secures Lopez Landron, the said mortgage having been created by a deed executed in San Juan on October 16, 1902, before notary Mauricio Guerra Mondragon.

That the following notes appear on the margin of this seventh record:

See records 7th at folios 48 and 58 reverse of this volume.

Humacao, October 23, 1902. Porrata.

See marginal note for nullity on the foregoing third record.

That annotation letter "A" of this property number 453 duplicate is at folio 22 of volume 11 of Naguabo and reads as follows:

Property called "Madama Duran" described in its foregoing first and second records the same as in the document presented. It is subject to a lis pendens notice of a complaint filed by Maria Rios, widow of Rubio, wherein the nullity of several records of this and other properties are claimed, and to a mortgage in favor of the Attorney General for five thousand dollars to secure the offices of notaries public Juan Hernandez Lopez and Rafael Lopez Landron, as shown by the foregoing seventh record. This property appears recorded in the name of Santiago R. Palmer e Irizarry by purchase from Guillermo Igaravidez y Landron, as shown by the foregoing sixth record. In the suit brought in the District Court of San Juan by Frank Antonsanti against the succession of Manuel Gonzalez, composed of his widow Clementina Lugo and their minor children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, Maria Gonzalez Lugo, married to Carlos Julia, and Manuela Gonzalez Lugo, married to Jose C. Rodriguez Cebollero, where in the sum of one thousand, two hundred and fifty dollars, plus two hundred dollars for legal interest, was claimed, the said court ordered the attach-

161 ment of property of the defendant succession sufficient to secure the effectiveness of the judgment that might be rendered, and in pursuance of said order the marshal levied an attachment on this property and another and asked in this Registry that the corresponding cautionary notice be entered in favor of Frank Antonsanti y Capo. Therefore, and in view of the fact that the property is not recorded in the name of the defendant succession, record of the said cautionary notice is refused and in its stead an annotation for the period of 120 days is made according to law in favor of Frank Antonsanti y Capo. The document includes other property which is recorded as indicated in the marginal note. The foregoing appears from a notice issued in duplicate by the marshal of the District Court of San Juan, Jose Labrador, on April 29 last, which was filed in this office at 3.50 p. m., on the 30th of said month of April, as shown by entry 769, at folio 282 of volume 14 of Journal. And the foregoing agreeing with the Registry and document referred to of which I file a duplicate in its proper roll under number 3, I sign this in Humacao on May 5, 1908. J. M. Cuadra.

That the following note appears on the margin of this annotation letter "A.:"

As to the other property which the enclosed annotation refers, see folio 240 reverse of volume 10 of Naguabo. Humacao, May 5, 1918.

That according to the eighth record of this property at folio 22 reverse, of volume 11 of Naguabo, Santiago R. Palmer and his wife, Catalina Romaguera Avila, sell this property and another to Manuel Gonzalez Fernandez, married, of age, property owner and resident of Rio Grande, for thirty thousand dollars, this property having been appraised at four thousand, eight hundred and fifteen dollars, the said sale having been made by a deed executed in San Juan on August 6, 1904, before notary Julio Cesar Gonzalez, as substitute notary for Santiago R. Palmer. That on the margin of this eighth record appears the note which reads as follows: As to the other properties to which the enclosed record refers, see the note on the margin of entry number 817, at folio 298, reverse, of volume 14 of the Journal. Humacao, June 8, 1908.

That the ninth record of this property number 453 duplicate is at folio 23 of said volume 11 of Naguabo and reads as follows:

162 Property called "Madama Duran" described in its foregoing first and second records the same as in the document presented. It is subject, together with another property, to a mortgage in favor of the attorney general as shown by the foregoing seventh record; to a lis pendens notice of a complaint filed by Maria Rios, widow of Rubio, against Victor Bursel and the Succession of Manuela Gutman et al. as shown by a note on the margin of the second record, and to an annotation of suspension for 120 days in favor of Frank Antonsanti y Capo, according to the foregoing letter "A." This property appears recorded in the name of Manuel Gon-

zalez y Fernandez by purchase from Santiago R. Palmer and his wife, Catalina Romaguera, as shown by the foregoing eighth record. The said Manuel Gonzalez y Fernandez, formerly a resident of Rio Grande, died in the ward of Mameyes Segundo of said district on August 19, 1904, leaving a will made on the 17th of the said month and year before the notary of San Juan, Santiago R. Palmer, whereby he declared his first and only marriage to Clementina Lugo y Calzada of which marriage his six minor children Maria, Manuel, Aristides, Manuela, Carlota and Clementina Gonzalez y Lugo were born, whom he designated as his sole and universal heirs in equal shares, and his said wife, Clementina Lugo, in the portion allowed her by law, also declaring that all the property belongs to the ganancial society, among which appears the property of this number as to which, as shown by the petition presented, record thereof is sought pro indiviso in favor of the said succession of Gonzalez under the conditions which more fully appear from the ninth full record of property No. 452, duplicate, at folio 19 of this volume. Therefore, Clementina Lugo y Calzada, Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo record in their favor and pro indiviso the property of this number by title of testate inheritance. One of the documents includes several other properties which are recorded as indicated by the marginal note. The presentation of the documents and other facts appear from the said full record, to which I refer.

Humacao, June 12, 1908. J. M. Cuadra.

That the following note appears on the margin of this ninth record:

As to the other properties to which the annexed record 163 refers, see margin of entry No. 818, at folio 299 of volume 14 of the Journal. Humacao, June 12, 1908.

That the documents causing the foregoing ninth record of this property number 453 duplicate, as well as the eighth record of property number 456 duplicate, already copied, were as follows: A copy of the deed executed on August 17, 1904, before notary of San Juan, Santiago R. Palmer, a certificate of the death of Manuel Gonzalez y Fernandez issued by Luis Sanchez Vahamonde, Municipal Secretary in charge of the Civil Registry of Rio Grande on June 3, 1908; a writing signed by Carlos Julia Davila on June 5, 1908, praying for the record pro indiviso in favor of the succession of Gonzalez of the properties belonging to Gonzalez y Fernandez, and a certificate issued by the Treasurer of Porto Rico on June 8, 1908, in regard to exemption from payment of taxes of the property left by said Gonzalez. That the tenth record of this property number 453, duplicate, is at folio 24 of volume 11 of Naguabo and reads as follows:

Rural property or farm called "Madama Duran," described in its foregoing first and second records the same as in the document presented. It appears subject to a mortgage in favor of the attorney general as shown by the foregoing seventh record and to a lis pendens notice of a complaint filed by Maria Rios widow of Rubio in the District Court against the succession of Manuela Gutman et al. as shown by the note on the margin of the second record, and to an

attachment in favor of Frank Antonsanti y Capo, according to foregoing letter "A." This property is recorded in the name of Clementina Lugo y Calzada and Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo by inheritance from her husband, the father of the minors, Manuel Gonzalez y Fernandez. The said Clementina Lugo y Calzada, in her own right and as mother with patria potestas over her minor children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, with authorization of the District Court of San Juan; Manuela and Maria Gonzalez y Lugo, all residents of Rio Grande, sold to Jose J. Benitez Diaz this property and two others all for the sum of seventeen thousand and six hundred dollars, without separately stating the price of each of the properties and in the terms which more fully appear from the record in 164 full number 9 of property number 456 duplicate, at folio 242 reverse of volume 10 of Naguabo. Therefore, Jose J. Benitez Diaz, records in his name the dominion title to the property of this number by title of purchase. The document includes two other properties which are recorded as indicated by the marginal note. The foregoing appears from a deed executed in San Juan on June 5th instant before notary Antonio de Aldrey y Montolio, and from a certificate signed by the deputy clerk of the District Court of San Juan, A. Marin Marien, in which is included an order of the court authorizing the sale of several properties, the said documents having been presented in this Registry as shown by the said record in full, to which I refer.

Humacao, June 18, 1908. J. M. Cuadra.

That the following appears on the margin of this tenth record:

The other two properties to which the enclosed record refers are recorded as indicated in the note on the margin of entries of presentation number 28, at folio 9 reverse, of volume 15 of the Journal.

Humacao, June 16, 1908.

The nullity of the enclosed record and following is claimed as well as of the several records of other properties in the suit brought before the District Court of Ponce by Aristides Gonzalez y Lugo, in his own right and as guardian ad litem of the minors Manuel, Carlota and Clementina Gonzalez y Lugo, against Jose J. Benitez and his wife, Carlota Sampayo Guzman, Clementina Lugo Calzada, Maria y Manuela Gonzalez y Lugo, Prudencio Eugui y Barriola and Diego Garcia Ortega, as shown by a note on the margin of the tenth record of the property of this number 454 duplicate, at folio 141 of volume 13 of Naguabo, to which I refer.

Humacao, September 15, 1913. Planellas.

That the eleventh record of this property number 453 triplicate is at folio 33 of volume 19 of Naguabo and reads as follows:

Rural property or farm called "Mandama Duran" described in its foregoing first and second records the same as in the document presented. It appears subject to a mortgage in favor of the Attorney

General as shown by the foregoing seventh record; to a lis pendens notice of a complaint filed in the District Court by Maria Rios widow of Rubio, against the succession of Manuela Gutman et al., 165 according to a note on the margin of the second record, and to an annotation of an attachment in favor of Frank Antonsanti y Capo according to that of foregoing letter "A." Jose J. Benitez Diaz, married, resident of Vieques, has this property recorded in his name by purchase from the succession of Manuel Gonzalez, as appears from the foregoing tenth record and by virtue of said title and as attorney in fact of his wife, Carlota Sampayo, also a resident of Vieques, created a first special voluntary mortgage on this property and another, by deed executed on June 7, 1913, before notary of Humacao Francisco Gonzalez Fagundo, to secure a loan to him made by Diego Garcia Ortega, a resident of Rio Piedras, represented by his attorney in fact Francisco Robledo Garcia, unmarried, of fifteen thousand dollars with interest at 12 per cent yearly, to be paid every three months in advance, the said mortgage also securing an additional sum of fifteen hundred dollars for costs, expenses and attorneys fees. This property shall be responsible for the sum of five thousand dollars for principal, two thousand dollars interest, and seven hundred and fifty dollars for costs, all as fully appears from the record in full number eleven of property number 456 triplicate, at folio 174 reverse, of volume 13 of Naguabo. Wherefore, Diego Garcia Ortega records in his name his mortgage right on this property. The document includes another record as indicated in the marginal note. The presentation and other facts appear from the record in full, to which I refer.

Humacao, P. R., July 19, 1913. Planellas.

That the following notes appear on the margin of this eleventh record: As to the other record see folio 174 reverse, of volume 13 of Naguabo, property number 456 triplicate, eleventh record.

Humacao, July 19, 1913. Planellas.

The nullity of the enclosed record is claimed as shown by a note on the margin of the foregoing tenth record of this property. Humacao, September 15, 1913.

That record eleventh and last of this property, number 453 triplicate, is at folio 33 reverse, of volume 19 of Naguabo and reads as follows:

Rural property or farm called "Madama Duran" described in its foregoing first and second records the same as in the document presented. 166 It appears subject, together with other properties, to a mortgage in favor of the Attorney General of Porto Rico as representative of the People of Porto Rico in the sum of five thousand dollars to secure the office of notaries public Juan Hernandez Lopez and Rafael Lopez Landron as shown by the foregoing seventh record; to a lis pendens notice of a complaint filed by Maria Rios widow of Rubio against Victor Burset and Succession of Man-

uela Gutman et al., as shown by note at the margin of the 2nd record; to another lis pendens notice of a complaint filed by Aristides Gonzalez y Lugo in his own right and as guardian ad litem of minors Manuel, Carlota and Clementina Gonzalez y Lugo, against Jose J. Benitez et al., as shown by a note on the margin of the tenth record and, together with other properties, to a mortgage for fifteen thousand dollars with interest of 12 per cent per annum to become due June 7, 1915, this property being held responsible for the sum of five thousand dollars for principal, two thousand dollars interest, and seven hundred and fifty dollars for costs, as it appears from the foregoing eleventh record; but from the document presented it only appears that it is subject to the last two liens mentioned. Jose J. Benitez has recorded in his name the property of this number which he acquired by purchase from succession of Manuel Gonzalez, as it appears from the foregoing tenth record, and by virtue of said title Jose J. Benitez, a resident of Vieques, in his own right and as attorney in fact of his wife Carlota Sampayo Guzman, and by a public deed executed in Humacao on September 2, 1914, before notary Francisco Gonzalez Fagundo, sold this property and two others to Manuel Rodriguez Gonzalez, unmarried; Jose R. Fuertes, married to Mercedes Garzot, and Faustina R. Fuertes, Jr., married to Carmen Garzot, residents of Naguabo, in equal part each, all for the sum of forty two thousand, five hundred dollars, to be paid as follows: eight thousand dollars at the execution of the deed, which said Benitez received and for which he gave a receipt; nine thousand and five hundred dollars that the purchasers shall pay during the period running from today (date of the said deed) to September 30, 1914, giving in the meantime a promissory note; twenty-five thousand dollars that the purchasers reserve to satisfy in due time the mortgages existing on this property and another which was sold, of which total price, for the purposes of the registry, was assigned to this property the sum of ten thousand, seven hundred and forty-six dollars, eighty cents, or one hundred dollars for each acre, with the conditions appearing from the record in full and fifteenth record of property 136 quadruplicate, at folio 127 reverse, of volume 11 of Naguabo. Wherefore, Manuel Rodriguez Gonzalez, Jose R. Fuertes and Faustino R. Fuertes, Jr., record in their names in equal parts the property of this number by title of purchase. The other two properties are as indicated by the marginal note. The presentation of the document and other facts appear in said record in full, to which I refer.

Humacao, April 27, 1915. Planellas.

That the following appears on the margin of this twelfth and last record:

See note on the margin of entry of presentation number 581 at folio 248 of volume 21 of Journal for the others.

Humacao, April 27, 1915. Planellas.

So it appears from the books of this registry under my custody; and at the request of attorney Herminio Diaz Navarro, and for the

proper legal ends, I issue this in Humacao at 3.40 p. m, of February 3, 1916.

RAUL BENEDICTO,
Registrar of Property.

Internal Revenue stamps have been cancelled for the value of fifteen dollars and thirty cents, according to No. 6 of tariff. Humacao, February 3, 1916.

RAUL BENEDICTO,
Registrar of Property.

Internal Revenue stamps have been cancelled.

The defendants offer in evidence a copy of the judgment of the District Court of San Juan, in case No. 2296, Clementina Lugo, widow of Gonzalez, for judicial authorization to sell the property of minors, the said authorization having been granted after showing utility and necessity. This document is the same one which was offered by the plaintiffs and admitted by the court and marked "Exhibit Letter A" of the plaintiffs, and has been fully copied into this statement.

The document which the defendants now offer is admitted without objection and marked "Exhibit C" of the defendants.

They also offer in evidence the petition filed in the District Court of San Juan, P. R., in the name of Clementina Lugo, widow of Gonzalez, by her attorney, Jose Martinez Davila, which was duly certified by the clerk of the District Court, Celestino Marrero Hernandez, with the object of proving the debts that petitioners then admitted and which affect the said properties.

Plaintiffs object to the admission of the said petition on the ground, among others, that the court lacked authority therefor, and that it is immaterial and impertinent in this case.

Defendants allege that they offer said petition as an admission. The court admitted the document and will give it the value it may have in connection with the order of the District Court of San Juan, and it is marked "Exhibit No. 4" of the defendants.

Plaintiffs take exception.

The said document reads:

In the District Court for the Judicial District of San Juan, P. R.

2296.

Ex Parte CLEMENTINA LUGO, Widow of Gonzalez.

Authorization for the Sale of Property of Minors.

Now comes the petitioner by her attorney Jose Martinez Davila and alleges: That she and her legitimate children Maria, Manuela, Aristides, Manuel, Carlota and Clementina Gonzalez Lugo are owners in common and pro indiviso of the following property composed of six parcels, the description of which is as follows:

"A." Property known by the name of Islote or "Islote de Rivolta," composed of 150 cuerdas of first class land, equivalent to 58 hectares, 96 ares, situated in the ward of Rio Abajo of the Municipal District of Naguabo, bounded on the north by the river named Rio Viejo which separates it from lands of Juan Garzot, on the east by said Rio Viejo separating it from Cercado Ramirez, formerly of Manuela Gutman widow of Bustelo, now of Palmer, down to the confluence of this river with the Rio Blanco Moderno; on the south by the Rio Blanco Moderno which separates it from other lands of the heirs of Pilar Ojeda, and on the west by lands of Ramon Argueso from a bamboo tree to the edge of the Blanco river, and hence to the confluence of a ditch with it and said Viejo river.

169 "B." Property named "Madama Duran," situated in the ward of Rio Abajo in the Municipality of Naguabo, consisting of 107.468 cuerdas, equivalent to 42 hectares, 24 ares, of low and mountain land, bounded on the north by the Rio Blanco which separates it from the Ramirez property formerly of Manuela Gutman and now of Garzot and Fuertes and by a part of the land belonging to the estate of Ramon Argueso; on the east partly by the said Blanco river which separates it from said Ramirez property and a part of the lands of Juan Buso; on the south by lands of Juan Buso, and on the west by lands of the estate of Ramon Argueso.

"C." A property known as "Los Puentes," situated in the place bearing the same name, ward of Rio Abajo of the Municipality of Naguabo, consisting of 36.223 cuerdas equivalent to 14 hectares, 23 ares, of mostly low land crossed by a road and bounded on the north by lands of Juan Buso and the Rio Blanco which separates it from the property of Ramirez, now Garzot and Fuertes; on the east by the said Rio Blanco, dividing line of said Ramirez property and lands of Francisco Buso, at right angles with the river Anton Ruiz; on the south by Francisco Buso at right angle with the river Anton Ruiz; and on the west by lands of Juan Buso, at right angles with the said Anton Ruiz river.

"D." A property known as Cercado de Torres and also as "Maizales," situated in the ward of Rio Abajo of Naguabo, consisting of 123.140 cuerdas, equivalent to 43 hectares, 39 ares, 87 centares, of first class and hilly land, bounded on the north and east by lands of Jesus Pereyo; on the south by lands of Petronila Patricia Rios y Gutman; and on the west by lands of Ramon Villamil and Marcelino Borges.

"E." Property known as Cercado Maldonado situated in the ward of Rio Abajo of the municipal district of Naguabo consisting of 35.190 cuerdas, equivalent to 13 hectares, 66 ares and 11 centares, bounded on the north by lands of Jesus L. Pereyo; on the east by a brook separating it from the lands of Jesus L. Pereyo and the Rio Viejo which separates it from the property called Islote Quinones, now of Palmer; and on the west by a brook which separates it from the lands of Cercado Torres, now of Santiago R. Palmer.

"F." Property known as Islote Quinones situated in the ward of Rio Abajo of the municipal district of Naguabo composed of 88.095 cuerdas, equivalent to 34 hectares, 23 ares, bounded on the north by the Rio Viejo which separates it from Cercado Maldonado, now of Palmer, and from lands of Cercado Torres, now of Petronila Patricia Rios; on the east by lands of Carmen Fuertes; on the south by the Rio Blanco of Naguabo, which separates it from lands of succession of Jose Rios Berrios; and on the west by the said river, the property "Mulas" and Cercado Torres.

That they acquired that property by inheritance from her husband and the father of the children, Manuel Gonzalez, who died in the ward of Mameyes within the municipality of Rio Grande on August 19, 1904. That half of the described property belongs to the petitioner, inasmuch as the hereditary property is ganancial, and the other half to her children Maria, Aristides, Manuel, Carlota and Clementina.

That for reasons of necessity and utility the petitioner is compelled to sell the property in question.

That the necessity for the sale is shown by the following reasons:

The succession of Manuel Gonzalez, represented by Clementina Lugo, owes the sum that will be hereinbelow stated and the payment of said debts is very urgent:

To attorney N. B. K. Pettingill for defense in an action of revendication of the property in question filed by Maria Rios in the Federal Court.....	\$4,000.00
For terminating the compromise in the suit brought by the trustee in the Bankruptcy proceedings of Succession of Gonzalez Hernandez & Co., against the Succession of Manuel Gonzalez	2,000.00
To attorney Frank Autonsanti for his intervention in the said suit brought by Maria Rios	1,250.00
To M. F. Baralt of Fajardo for the recovery of a promissory note due two years since, of those executed for the payment of the aforesaid described property.....	1,896.64
Total	\$9,146.64

That the property sought to be sold is valued at \$48,000. That petitioner will receive for the property she desires to sell not less than \$48,000. That the Succession of Gonzalez owns only this and another small property the value of which does not amount to two thousand dollars.

That at present only half of the property in question is leased and the rent is not sufficient to cover the expenses of the petitioner and her children. That the petitioner thinks that by investing the surplus of the sum received from the sale of the property in question in properties in San Juan she will obtain a rent with which she might be able to cover the most urgent necessities of herself and children and the education of the said children.

In view of the foregoing the petitioner prays that this court authorize her to sell the share belonging to her minor children for

the sum of \$16,000, petitioner binding herself to invest the said surplus, after satisfaction of all debts, in properties in this city.

San Juan, P. R., May 26, 1908.

JOSE MARTINEZ DAVILA,

Attorney for Petitioner.

Filed, Secretary's office, May 27, 1908.

I, Clementina Lugo Calzada widow of Gonzalez, having been duly sworn declare: That the facts stated in the foregoing petition are true and nothing but the truth and I know them of my own personal knowledge and also by information.

CLEMENTINA LUGO,

Widow of Gonzalez.

Sworn to and subscribed before me by Clementina Lugo y Calzada this 26th day of May, 1908.

EUGENIO BENITEZ,

Notary Public.

Entered under No. 11.

(There is a seal.)

I, Celestino Marrero y Hernandez, Clerk of the District Court for the Judicial District of San Juan, hereby certify that the foregoing is a faithful and correct copy of its original filed in the corresponding record. And at the request of Jose J. Benitez I issue this copy which I sign and affix the seal of the court, in San Juan, this third day of May, 1914.

C. MARRERO.

Clerk.

The defendants offer in evidence deed No. 326, which is a release executed by Maria Gonzalez Lugo et al. in favor of Jose J. Benitez Diaz on October 28, 1911, before notary Francisco Gonzalez Fagundo of the city of Humacao.

Plaintiffs object to the admission of said deed, first, because it was not executed by the minors as plaintiffs nor by their mother with patria potestas over them, nor by any person with legal capacity to represent the mother nor any person who may be affected; because it appears therefrom that the mother was represented by a general attorney in fact for herself and in the names of the minor plaintiffs, according to a power of attorney said to have been given, and under the law of evidence this cannot be admitted as a statement of the mother without previously showing the existence of such power of attorney on the part of the person who appeared therein; and further, because the object being to show an acknowledgment of certain debts by the minors, Jose J. Benitez Diaz appears as making payment of a debt to Mr. Petingill of four thousand and five hundred dollars, and another to a certain Jesus Maria Porrata of six hundred dollars, and also the delivery of certain sums of money to the said attorney in fact who appeared and not to the minors appearing herein, and

that the sum of \$1,135.25 was previously delivered to the heirs already of age, but not to the minors. And as to the ratification of Aristides Gonzalez Lugo, because he is a co-defendant and has not sued Benitez.

The document is admitted by the court for the value it may have and is marked "No. 5" of the defendants.

Plaintiffs take exception to the admission of said document.

The said document reads as follows:

Deed of Release.

Number Three Hundred and Twenty-six.

In Naguabo on October 26, 1911, before me, Francisco Gonzalez Fagundo, attorney-at-law and notary public of Porto Rico, with residence and office on Santa Rosa street of the city of Humacao, and the instrumental witnesses hereinafter to be mentioned, appear, 1. Maria Gonzalez Lugo, married, property owner, twenty-five years of age and resident of Naguabo. 2. Carlos Julia Davila, married, property owner, thirty-two years of age, and resident of Naguabo. The former appears in her own right and the latter as attorney in fact of Clementina Lugo, widow of Gonzalez, fifty-two years old, property owner and resident of Naguabo, by virtue of the power of attorney which in her own right and as mother with patria potestas over her minor children Aristides, Manuel, Carlota, Manuela and Clementina Gonzalez y Lugo, twenty, seventeen, sixteen and twelve years old, respectively, conferred upon him by deed executed in San Juan on August 29, 1906, before notary Julio Cesar Gonzalez, and also as special attorney in fact of Manuela Gonzalez Lugo, twenty-two years old, married to Jose C. Rodriguez Cebollero, property owner and resident of Manati, as appears from the power of attorney conferred in the town of Manati on the 24th instant before notary of San Juan, Jose C. Martinez Santana, of which power a copy is being examined by me, and I, the notary, am certain that there are sufficient powers for this act. Of knowing the parties appearing, I the notary, certify, and as to their status, age, profession and residence, I also certify in view of their statements. They possess to my belief the necessary legal capacity for this act, and state:

First. That by deed No. 68 of June 5, 1908, executed in San Juan before notary of Humacao, Antonio de Aldrey Montolio, Clementino Lugo Calzada, in her own right and as representative of her aforesaid minor children, Maria and Manuela Gonzalez y Lugo, sold to Jose J. Benitez Diaz for the sum of \$17,600, which the vendors acknowledged having received, three rural properties situated in the ward of Rio of the District of Naguabo, the said properties having been described in the said deed of purchase and sale, a copy thereof having been duly recorded in the Registry of Property of Humacao in volumes 13, 10 and 11 of Naguabo, at folios 141, 242 reverse, and 24, properties Nos. 454 duplicate, 456 duplicate, and

453 duplicate, respectively. The said deed recited that Benitez should convey to the Succession Gonzalez a property known as "El Zarzal" situated in the district of Rio Grande.

Second. That as it appears from an affidavit signed by said Clementina Lugo, widow of Gonzalez, Maria Gonzalez de Julia, Manuela Gonzalez de Rodriguez and Jose J. Benitez, on June 5, 1908, before the said notary Antonio de Aldrey, and to obviate any difficulty that might arise with respect to a suit for the nullity of a certain sale, wherein it is deemed that the three properties sold to Benitez are included, and which was brought by Maria Rios in the District Court of Humacao, the first three delivered to Benitez eight thousand dollars of the money received from the sale of the properties, with the stipulation that in case this suit was decided before April 15, 1909, and in case the decision was favorable, Benitez should deliver promissory notes on the said date for the said eight thousand dollars, but in the event the said suit was not decided at such date, then no delivery of the eight thousand dollars was to be made until the final decision in the suit, the said sum not to bear interest.

Third. That as appears from an instrument of February 7, 1909, signed by Mrs. Lugo de Gonzalez, Mrs. Gonzalez de Julia and Mrs. Manuela Gonzalez, these ladies received from Benitez the sum of one thousand, one hundred and thirty-five dollars and twenty cents which should be deducted from said eight thousand dollars.

Fourth. That Benitez likewise paid to N. B. K. Pettingill for the purpose that a deduction was also made from the remainder of said eight thousand dollars, the sum of four thousand, five hundred and forty-seven dollars by virtue of an order of the United States District Court for Porto Rico in an equity suit brought against the succession of Gonzalez for the collection of fees and costs, as appears from a copy of a deed of release executed in San Juan on August 25, 1910, before notary Juan Morera Martinez.

Fifth. That the succession of Gonzalez likewise issued in favor of Jesus Maria Porrata an order against Jose J. Benitez Diaz for the sum of six hundred dollars, the said sum having also been paid by said Benitez.

Sixth. That after deducting the aforesaid sum from the eight thousand dollars owed by Benitez a surplus remains of one thousand seven hundred and seventeen dollars and eighty cents in favor of the Succession of Gonzalez.

Seventh. That the said suit having terminated by a judgment and Benitez having remained in the possession and full ownership of the three properties sold, he by the attesting notary makes payment of the sum of one thousand, seven hundred and seventeen dollars and eighty cents which is the sum remaining from the eight thousand dollars, by an order which Gonzalez gives for that sum in his capacity of notary to Benitez, which sum the parties appearing and in the capacity with which they appear receive and

accept, giving for that sum and the others already delivered by Benitez prior to this act totalling the sum of eight thousand dollars which was the sum delivered to said Benitez as appears from the affidavit of June 5, 1908, already referred to, the most solemn release, inasmuch as the affidavit has been lost.

So it is stated, executed and signed, together with the witnesses, of age and without any legal impediment to act as such, whom I know, Arturo S. Belaval and Luis J. Diaz, after having read this deed to all of them who waived their right to read it themselves as to which I advised them; of this as well as of the fact that a foot note is at the end of this deed with respect to a part interlined "remaining from the eight thousand dollars," "in the capacity with which they appear" and everything else, I, the notary, certify. At this moment and it being shown that Aristides Gonzales Lugo is twenty-one years old and married, he appears and ratifies the contents of this deed, giving for his share in the debt of eight thousand dollars the most solemn release in favor of Jose J. Benitez Diaz. I the notary, certify as to my acquaintance with Aristides, as well as to his age and status, upon his information. As to everything else, I the notary certify.

MARIA G. DE JULIA.
CARLOS F. JULIA.
ARISTIDES GONZALEZ.

ARTURO S. BELAVAL.
LUIS J. DIAZ.

Marked.

FRANCO. GONZALEZ. [RUBRIC.]

(An internal revenue stamp is cancelled.)

The foregoing is a faithful and correct copy of its original which is in my general protocol of the current year of public instruments, to which I refer. In witness whereof and at the request of Jose J. Benitez Diaz I issue this first copy on two sheets of paper of my use, a memorandum having been kept as to the issuance of this copy, which I mark and sign and affix the seal of my office, in Humacao, on October 30, 1911.

(Signed and marked)

FRANCO. GONZALEZ.

(An internal revenue stamp has been cancelled with the notary's seal.)

176 Defendants offer in evidence affidavit No. 10, executed before the notary of Humacao Antonio de Aldrey in the year 1908, by Clementina Lugo Calzada, Maria Gonzalez Lugo and Manuela Gonzalez Lugo of one part and by Jose J. Benitez of the other part.

Plaintiffs object to its admission because it cannot serve in corroboration, it being of a prior date to that of the deed just presented. It bears date of the same day on which the attached deed of sale

was executed in favor of Benitez, which was on June 5, 1908. A because there is no showing as to the authorization she had to lend with Benitez any definite sum of money. In the third place, because it is immaterial and impertinent as it refers to a suit pending against the succession of Gonzalez; because she had no power without the order of the court to execute said affidavit; and finally, because the said paper is nothing but an affidavit, and not being a deposition is not admissible according to the law of evidence; and further because it is hearsay evidence as to the parties therein appearing.

The document is admitted by the court and marked "No. 6" the defendants.

Plaintiffs take exception.

This document reads as follows:

Affidavit.

Number 10.

In the city of San Juan, Porto Rico, on June 5, 1908, we the undersigned, Clementina Lugo Calzada, widow, property owner, fifty years old and a resident of Rio Grande; Maria Gonzalez y Lugo, married, property owner, twenty-three years of age and resident of the said town; Manuela Gonzalez Lugo, married, property owner, twenty-one years old, of the same town; and of the other part, Jose J. Benitez Diaz, married, property owner, forty-two years old and a resident of the island of Vieques, Carlota Sampayo being his wife. We have entered into the following agreement:

1. By a public deed executed in the city of Humacao before notary Antonio de Aldrey Montolio on this date and in this city, the first three in their own rights, the first also as mother with patria potestad over her minor and unemancipated children Aristides, Manuel Carlota and Clementina Gonzalez y Lugo and duly authorized by the District Court for the Judicial District of San Juan P. R., First Section, have sold to the other party, Jose J. Benitez Diaz, the three rural properties described more particularly in the said deed, said properties being situated within the districts of Naguabo, Porto Rico, and called "Madama Duran," "Las Puertes" and "Islote Quinones," the sale having been made for the sum of seventeen thousand and six hundred dollars, American money, the vendors having acknowledged the receipt of said sum to their satisfaction and prior to the execution of the deed, it being made to appear that by reason of the agreements made between Jose A. Diaz y Gomez and the succession of Gonzalez the property "Madama Duran" was to be conveyed to him, the said Diaz y Gomez being bound by the deed of dissolution of the agricultural society of Diaz & Benitez to convey the said property to Benitez Diaz, and Jose Agustin Diaz being under the obligation of conveying to the succession of Gonzalez a property situated in the District of Rio Grande and known by the name of "Zarzal."

2. That inasmuch as prior to making the sale set out in the foregoing paragraph a complaint was filed by Maria Rios against Victor Burset et al. for the nullity of a sale, wherein not only the described properties are included but others which are situated in the district of Naguabo and known by the names of "Islote" or "Islote de Riolta", "Cercado Torres" and "Maizales" or "Cercado Maldonado", which are fully described in deed No. 240 executed in San Juan on August 6, 1904, before notary Julio Cesar Gonzalez, and the aforesaid complaint was recorded in the Registry of Property of the District of Humacao at the request of plaintiffs, there is no doubt that a new action is brought as to the properties acquired by Jose J. Benitez.

3. That in order to obviate any difficulty that might arise by reason of the said suit and that the interests of Benitez Diaz may not be prejudiced by the final decision of the said suit, Maria and Manuela Gonzalez y Lugo in their own rights and Clementina Lugo y Calzada in her own right and also as mother with patria potestas over her minor unemancipated children Aristides, Manuel, Carlota and Clementina Gonzalez y Lugo, deliver to Jose J. Benitez the sum of eight thousand dollars in American money which sum they have received of a larger sum for the sale referred to in paragraph 1 of this instrument, the said sum being subject to the stipulations hereinafter mentioned.

4. If for any reason the suit brought by Maria Rios, widow of Rubio, against Victor Burset Masferrer et al. is lost, and inasmuch as in no circumstances would the loss be more than half of each of the properties, the first party guarantees to the second party the sale of the other half of the properties they have in the district of Naguaba, which properties are described in the aforesaid document No. 240 of August 6, 1904.

5. When the suit is decided and provided it is before the 15th of April, 1915, and if the decision is favorable to the contracting parties, Jose J. Benitez Diaz shall deliver promissory notes to the succession of Gonzalez for the sum of eight thousand dollars to become due on April 15, 1909.

6. That if the suit referred to should not have been decided on April 15, 1909, then Benitez shall not make payment to the succession of Gonzalez of the eight thousand dollars, which sum is now given him, until the final decision of the said suit, the said sum bearing no interest whatsoever.

7. We designate the city of Humacao for the performance of this contract.

And as security of the contracting parties we solemnly swear to this instrument before the proper official, of which two copies are to be made. San Juan, Porto Rico, June 5, 1908.

CLEMENTINA LUGO, *Widow of Gonzalez*,
MARIA GONZALEZ DE JULIA.
MANUELA A. GONZALEZ DE RODRIGUEZ.
JOSE J. BENITEZ.

The foregoing affidavit, which is No. 10 of the Registry of the current year, and composed of four folios including this which are rubricated and sealed on each page, has been signed and sworn to before me by Clementina Lugo Calzada, widow, fifty years old; Maria and Manuela Gonzalez Lugo; Jose J. Benitez, married, twenty three, twenty-one and forty-two years old, all property owners and residents, the first three of Rio Grande, and the latter of Vieques, 179 whom I personally know, in San Juan, Porto Rico, this 5th day of June, 1908.

[Notary's Seal.]

ANTONIO DE ALDREY,
Notary Public.

The defendants also offer in evidence a certificate of the Clerk of the United States District Court for the District of Porto Rico showing that a suit was filed there by attorney N. B. K. Pettingill against the succession now the defendant in this suit, and also against Jose J. Benitez Diaz with regard to the suits to which the evidence presented refers, wherein Benitez was adjudged to pay for the succession the sum of four thousand and five hundred and twenty dollars. Plaintiffs make a general objection that the said certificate is impertinent in this case.

It is admitted in evidence by the court and marked "No. 7" of the defendants, plaintiffs taking an exception.

The said document reads as follows:

In the United States District Court for Porto Rico.

In Chancery.

No. 609. San Juan.

N. B. K. PETTINGILL

VS.

CLEMENTINA LUGO, CALZADA, MARIA GONZALEZ LUGO, CARLOS JULIA, Manuela Gonzalez y Lugo, — Rodriguez, Aristides Gonzalez y Lugo, Manuel Gonzalez y Lugo, Carlota Gonzalez y Lugo, Clementina Gonzalez y Lugo, and Jose J. Benitez Diaz.

This cause coming on this day for final hearing upon the issues made by the pleadings and the evidence introduced on behalf of the respective parties, and the court having heard and duly considered the same, the court finds therefrom that the equity of the cause is with the complainant; that the defendants composing the succession or heirs of Manuel Gonzalez entered into the contract with the complainant as alleged in his bill of complaint; that there is due the complainant from said succession under said contract the sum of Four Thousand Dollars and interest, amounting at this date to the sum of four thousand five hundred and twenty (\$4,520), that the

said indebtedness was and is under said contract a lien upon the following described real property, to wit:

180 "A rural estate known by the name of 'Islote' or 'Islote Rivolta', composed of 150 cuerdas of first class land, equivalent to 58 hectares, 96 acres situated in the barrio of Rio Abajo, jurisdiction of Naguabo, bounded on the north by a branch of the Rio Abajo known as Rio Viejo which separates it from the lands of Juan Buso, now Juan Garzot, on the east by the same Rio Viejo which separates it from a lot known as the Ramirez lot belonging to Manuela Gutman, widow of Bustelo, as far as the junction of the mentioned branch with the Rio Blanco Moderno; on the south with the Rio Blanco Moderno, which separates it from other lands of Pilar Ojea, who has succeeded to his ownership, and on the west by lands belonging to Cristino Lebron and the succession of Ramon Argueso from a bamboo at the edge of the Rio Blanco to a junction of a ditch with the already mentioned Rio Viejo.

"Another lot known as the 'Madama Duran' composed of 107.468 cuerdas, equivalent to 42 hectares, 24 acres, situated in the same barrio and jurisdiction, bounded on the north by the Rio Blanco, which separates it from the 'Cercado Ramirez' belonging to Manuela Gutman and by part of the lands owned by Pedro Lebron, on the west partly by said Rio Blanco, which separates it from said 'Cercado Ramirez' and partly by lands owned by Juan Buso, and on the west by lands owned by Succession Argueso, formerly by Pedro Lebron.

"Another rural property called 'Los Puentes' composed of 36.223 cuerdas, equivalent to 14 hectares, 23 acres, situated in the same barrio and jurisdiction, bounded on the north by lands owned by Juan Buso and the Rio Blanco which separates it from the 'Cercado Ramirez', on the east by said Rio Blanco, dividing line between the 'Cercado Ramirez' and lands owned by Francisco Buso, on the south by lands of Francisco Buso, with the river Anton Ruiz, and the west by the lands of Juan Buso which forms an angle with said river Anton Ruiz.

"Another rural property known as 'Cercado Maldonado' composed of 38.190 cuerdas, equivalent to 13 hectares, 832 acres, situated in the same barrio and jurisdiction, bounded on the north by lands of Jesus L. Pereyo, on the east by a creek which separates it from lands owned by said Pereyo and by the Rio Viejo which separates it from lands belonging — it from the property known as 'Islote Quinones' and on the west by a creek which separates it from the lands of the 'Cercado Torres'.

181 "And another rural property known as 'Islote Quinones', composed of 88.095 cuerdas, equivalent to 34 hectares, 628 acres, situated in the same barrio and jurisdiction, bounded on the north by the Rio Viejo which separates it from the 'Cercado Maldonado' and the 'Cercado Torres', on the east by lands owned by succession of Ramon Argueso; formerly Cecilio Rodriguez, and today Mrs. Carmen Fuertes, on the south by the Rio Blanco which separates it from lands owned by the succession of Jose Rios y

Berrios and on the west by said Rio Blanco, the Hacienda 'Mulas' and 'Cercado de Torres'".

That at the time of the purchase by the defendant Jose J. Benitez Diaz by the heirs of Gonzalez, said properties known as "Madama Duran", "Los Puentes" and "Islote Quinones" said first named defendant had full knowledge of the amount and lien of complainant's claim, and bought said properties subject thereto; that from the agreement introduced in evidence made at the same time and legally constituting a part of said contract of sale it appears that defendant Benitez Diaz has retained sufficient of the purchase money and otherwise protected himself so that he may properly be required to pay to the complainant the amount due, be entitled to credit therefor in his settlement with his co-defendants.

It is therefore hereby ordered, adjudged and decreed that the complainant, N. B. K. Pettingill, do have and recover of and from the defendants constituting the heirs or succession of Manuel Gonzalez, composed of Clementina Lugo Calzada, Maria Gonzalez y Lugo, Manuela Gonzalez y Lugo, Maria Gonzalez y Lugo, Aristides Gonzalez y Lugo, Manuel Gonzalez y Lugo, Carlota Gonzalez y Lugo, and Clementina Gonzalezy Lugo, and from—of four thousand five hundred and twenty dollars (\$4,520) with interest thereon from this date at the rate of six per centum per annum, together with the costs of this suit, taxed at the sum of \$27.00; and that, in default of payment of the same, said indebtedness is hereby decreed to be a lien upon the tracts and parcels of real property hereinbefore described, and upon each and everyone thereof and after such default has continued for the space of ten days the said described premises, or so much as may be necessary and sufficient to realize the amount so due complainant as aforesaid for principal, interest and costs may be sold at public auction by a special Master in Chancery of this court in the manner provided by law for the satisfaction of the same.

182 It is further hereby ordered, adjudged and decreed that R. H. Todd, Esq., a member of the bar of this court, be and he is hereby appointed such Special Master in Chancery to execute this decree, in case it shall become necessary, by making said sale; that he give public notice of the time and place of said sale by publishing the same for four successive weeks once each week in a newspaper regularly published and having a general circulation in this District; that said sale be made at the door of the Court House of this Court in the city of San Juan; that said parcels of property be sold separately; and that said Master make a report to this court of his doings in the premises with all convenient speed in case the debt of complainant is not satisfied within said term and such sale rendered unnecessary. And all other matters pending in said cause are hereby reserved for further order. Done and ordered in open court at San Juan within said District this 17th day of August, A. D. 1910.

JOHN J. JENKINS,

Judge.

In the District Court of the United States for Porto Rico.

609.

N. B. K. PETTINGILL

vs.

CLEMENTINA LUGO CALZADA et al.

I John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing to be a true and faithful copy of the final decree in the above entitled cause, as the same appears of record and on file in my office under date of August 17, 1910.

Witness my hand and the seal of the aforesaid court, at San Juan, this 18th day of August, 1910.

JOHN L. GAY.

The defendants offer in evidence release deed No. 16, executed by Mr. Pettingill in favor of Jose J. Benitez Diaz on August 25, 1910, before notary Juan Morera Martinez, wherein attorney Pettingill acknowledges that Benitez Diaz made payment to him of the sum, etc.

Plaintiffs object for the same reasons given in opposition to the admission of the foregoing document of the defendants, inasmuch as it is expressly stated that Benitez Diaz was adjudged in solidum to make a total payment of said fees.

It is admitted by the court and marked "No. 8" of the defendants. Plaintiffs except.

The said document reads as follows:

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Deed of Release.

No. 16.

N. B. K. Pettingill.

Witness:- Rafael Martinez Nadal, Evaristo Velez Lopez.

In the city of San Juan, Porto Rico, on August 25th, 1910, before me, Juan Morera Martinez, attorney-at-law and notary of the island of Porto Rico, with residence and office in the said city, appears N. B. K. Pettingill, attorney-at-law, married, forty-seven years old and a resident of this city. I know the party appearing and certify as to his personal circumstances in view of his statements. He has in my judgment the necessary legal capacity for the execution of this deed, and freely says:

First. That the succession of Manuel Gonzalez y Fernandez composed of Clementina Lugo Calzada and her children, Maria, Manuela, Aristides, Manuel Gonzalez Lugo, owed him the sum of four thousand dollars as professional fees for various cases in which he represented and defended them before the United States District Court for the District of Porto Rico, and before the Supreme Court of the United States.

Second. That the said succession of Gonzalez had clearly admitted the said debt and was bound to make payment thereof with the property object of the said suits; that on June 5th 1911, the said succession sold to Jose J. Benitez Diaz three properties called "Madama Duran," "Los Puentes" and "Islote Quinones," which in the opinion of the undersigned were bound for the satisfaction of his professional fees.

Third. That the undersigned not having been able to obtain from said succession of Gonzalez the satisfaction of the said debt, filed a suit in equity before the Federal Court against the said Succession of Gonzalez and Jose J. Benitez wherein he claimed from both severally and jointly the payment of his fees and prayed the court that he be considered as having a lien on the aforesaid properties for the said professional services.

Fourth. That the said complaint was filed under No. 609 in equity, and the suit having been proceeded with, on the 17th of August of the present year the court rendered a final decree declaring that the said lien really exists in favor of the plaintiff on the property
184 to which the suit referred; that the Succession of Gonzalez owed the plaintiff the sum of four thousand five hundred and twenty dollars, and that inasmuch as Jose J. Benitez, defendant in the said suit, had sufficient funds of the said Succession to pay the said debt, plus the sum of twenty-seven dollars for costs, the said sum should be paid by Benitez to the plaintiff, he being entitled to charge the said sum to the account of the Succession of Gonzalez.

Fifth. That yesterday the said Jose J. Benitez Diaz, complying with the aforesaid decree paid to the undersigned plaintiff the sum that he was bound to pay, following the terms of the decree; wherefore he gives to Jose J. Benitez Diaz this release for the sum of four thousand, five hundred and forty-seven dollars, amount of the debt of the Succession of Manuel Gonzalez, plus interest and costs, granted by said decree, he binding himself to properly show this satisfaction of the debt in the United States District Court for the District of Porto Rico.

At this act were present the releasor and the instrumental witnesses, of age and residents of San Juan, Evaristo Velez Lopez and Rafael Martinez Nadal, of Mayaguez. The foregoing deed was read by said Pettingill and the witnesses, and the former finds it in due form and agrees and signs it with the witnesses. I, the notary, certify as to the contents of this public instrument which I issue on two sheets of paper, which I mark, sign and rubricate. With express approval

of the principal and witnesses the following memorandum is made:
Stricken out "this" does not read. I again certify.

N. B. K. PETTINGILL.

RAFAEL MARTINEZ NADAL.
EVARISTO VELEZ LOPEZ.

Marked.

JUAN MORERA MARTINEZ.

The foregoing agrees with its original which I have examined and which under the number at the heading is in my protocol of public instruments, to which I refer and attest. And at the request of Jose J. Benitez Diaz I issue this copy on two sheets of paper of my use after having kept a memorandum thereof and cancelled a stamp of 50 cents, which I sign, mark and rubricate, this 27th day of August, 1910, in the city of San Juan, P. R.

Marked.

JUAN MORERA MARTINEZ.

(An internal revenue stamp is cancelled.)

185 Attorney for defendant Diego Garcia Ortega offers in evidence in the first place a certificate from the Registrar of Property of Humacao of January 24, 1916, with respect to the record of the mortgage and sale wherein the annotation of the said claim was made in the Registry of Property of Humacao.

Plaintiffs say that it is impertinent to decide the matter referring to the annotation of the complaint in this case with respect to the validity of the mortgage of Garcia, inasmuch as the complaint alleges that he had knowledge, the property having been recorded in favor of Benitez in the year 1908, and the property being situated in Naguabo, within the municipal District of Humacao.

The document is admitted by the court and is marked "No. 9" of the defendants. Plaintiffs take exception.

It appears from said document that the mortgage in favor of Diego Garcia Ortega was recorded in the Registry of Property of Humacao on June 19, 1913, and the claim for nullity of the record, made by Aristides Gonzalez Lugo in his own right and as guardian ad litem of the minors Manuel, Carlota and Clementina Gonzalez y Lugo, was filed in the Registry on September 11, 1913, and entered on September 15, 1913.

The defendants having concluded their evidence, the plaintiffs filed a motion praying the court to reconsider its ruling refusing admission of the last two exhibits of the plaintiffs, or that which is marked for identification under letter "G" of the plaintiffs. (The motion was argued.)

The defendants opposed the said reconsideration.

The court makes the following ruling: The court orders that this motion for reconsideration remain in the record to be considered when the suit is decided on its merits, the parties being granted leave to make whatever suggestions they may desire in their briefs. Then

the court after having fully considered the matter, if it deems that the writing should be admitted it will be admitted, but if it considers that its ruling should stand it will be so ordered. The parties may argue fully this question. It is a question of importance. The court, when the suit is decided on its merits, will consider whether the motion for reconsideration should be sustained; that is whether "Exhibit G" will be admitted for consideration, and in such case an exception will be made to appear for the party to whom the motion may be prejudicial. The parties filed briefs and the court rendered judgment from which an appeal was taken to the Supreme Court of Porto Rico.

Such is the Bill of Exceptions and Statement of the Case that appellants file for the purposes of the appeal taken.

Humacao for Ponce, March 23, 1918.

FRANCO GONZALEZ,

Ponce, P. R.

JOSE A. AND ALBERTO S. POVENTUD,
By JOSE A. POVENTUD,
Attorneys for Plaintiff-Appellants.

Filed March 25, 1918.

FELIPE COLON,

Clerk,

By A. GOTAY PURCELL,
Deputy Clerk.

Affidavit.

ISLAND OF PORTO RICO,

District of Humacao, ss:

Luis E. Sanchez, having been duly sworn, says: That he is a resident of Humacao, of age, and has no interest in this case; that attorney Francisco Gonzalez Fagundo is also a resident of Humacao; that between Humacao and Fajardo, Humacao and Rio Piedras, Humacao and San Juan, Humacao and Dorado, P. R., there is a daily mail service; that today, March 25, 1918, he deposited in the postoffice of the city of Humacao four registered envelopes each containing a copy of the Statement of the Case and Bill of Exceptions presented for approval in this case, the said envelopes having been addressed as follows: To Clementina Lugo Calzada, No. 12 "Pino" Street, Fajardo, P. R.; another to Manuela Gonzalez Lugo at her residence in the town of Rio Piedras, P. R.; another to Maria Gonzalez Lugo at her residence in the city of San Juan, P. R., No. 56 "Sol" street; another to Aristides Gonzalez Lugo, Ward of "Mameyles" in the District of Dorado, P. R.; that all of the said envelopes bore postage; that a copy of the said Statement and Bill of Exceptions was personally delivered by him to Prudencio Eugui y Barriola on March 25, 1918, in the city of Humacao; that the foregoing is the truth and nothing but the truth.

Humacao, P. R., March 25, 1918.

LUIS E. SANCHEZ.

Sworn to and signed before me by Luis E. Sanchez, resident of Humacao, of age, unmarried, whom I personally know, in Humacao, this 25th day of March, 1918.

FERNANDO VAZQUEZ,
Notary Public.

Approval of Statement.

I, Domingo Sepulveda, Judge of the District Court for the Judicial District of Ponce, P. R., who heard the suit and rendered the judgment appealed from in this case, hereby certify that the foregoing Statement of the Case and Bill of Exceptions is correct, exact and true, and the same having been submitted to me by plaintiff-appellants and by the defendants who have appealed in support of their respective appeals, I hereby approve and sign said Statement so that it may form part of the judgment-roll in this case and be available at the hearing on the said appeals.

Ponce, P. R., May 28, 1918.

D. SEPULVEDA,
Judge of the District Court of Ponce.

Certificate.

The undersigned attorneys certify that the foregoing transcript is a faithful and correct copy of the originals on file in the record of this case in the office of the Clerk of the District Court of Ponce, P. R. And for the purposes of the appeals taken by the plaintiffs and by several of the defendants (as appear from the notices of appeal) from the judgment rendered in this case to the Supreme Court of Porto Rico, we sign this to serve as a transcript for all the appellants.

Humacao, P. R., June 28, 1918.

FRANCO GONZALEZ,
Attorney for Defendant-Appellants.

Ponce, P. R., July 8, 1918.

JOSE A. AND A. S. POVENTUD,
By J. A. POVENTUD,
Attorneys for Plaintiff-Appellants.

In the Supreme Court of Porto Rico,

No. 1885.

CARLOTA GONZALEZ LUGO et al., Plaintiffs and Appellants,
vs.

JOSE J. BENITEZ et al., Defendants and Appellees.

Appeal from the District Court of Ponce.

Opinion of the Court, Delivered by Mr. Justice Del Toro.

San Juan, Porto Rico, May 23, 1920.

Manuel Gonzalez y Fernandez died in the year 1904. While married to Clementina Luga Calzada he had acquired the three rural properties referred to in this action, all situated in the Municipality of Naguabo of the judicial district of Humacao. On the death of Gonzalez the ownership of the said properties passed to his wife and their legitimate children, Maria, Manuela, Aristides, Manuel, Carlota and Clementina, and so it was made to appear in the registry of property.

On June 5, 1908, Clementina Lugo y Calzada, in her own right and in the names of her then unemancipated minor children, Manuel, Carlota, Clementina and Aristides Gonzalez y Lugo, and Maria and Manuel Gonzalez y Lugo, both in their own right, appeared before a notary public and sold the said three properties to Jose J. Benitez. Clementina Lugo had been previously authorized by the District Court of San Juan to sell the interests of her minor children in the said properties. Benitez forthwith entered into possession of the lands, which he leased, mortgaged and finally sold, in 1913 and 1914, to other persons. The sales were made after this action had been begun in 1913. The amended complaint filed in Ponce is dated 1916.

The plaintiffs prayed the court to adjudge that the sale was a mere nullity as to them because it was made contrary to law; that they were entitled to their joint interests of an undivided three-sixths part of an undivided half of each of the properties; that the common property be divided and the plaintiffs be put in possession of their respective shares, and that the plaintiffs recover from defendant Benitez the sum of \$8,000, as rents and profits, together with the costs.

There were several defendants, but it is only necessary to refer to the answer of defendant Benitez. He alleged that the contract was valid; that the sale of the interests of the minors was necessary, and that the minors profited thereby. He prayed the court to dismiss the complaint, and in the event that the contract should be held to be void, that the plaintiffs be adjudged to reimburse him for the purchase price.

The District Court handed down a long well-reasoned opinion and finally entered judgment in the case on January 30, 1918, holding, among other things, that the authorization of the court and the contract of sale were null and void and of no legal effect as to the minor plaintiffs; that, nevertheless, Benitez had held possession in good faith until the filing of the complaint and was only under the obligation to return such profits as the properties had produced from that date, the amount of which should be determined in a separate action, and that the plaintiffs should reimburse defendant Benitez for the purchase price in proportion to their interests in the properties.

Both the plaintiffs and the defendants appealed and their appeals were prosecuted and heard together, as they will be considered together by this court.

As may be seen, the real fundamental question involved in this case is whether an authorization of a court to sell property of minors, given by a district court of a district in which the property is not situated, is null and void.

When the District Court of Ponce rendered the judgment appealed from this court had not decided the cases of Martorell et al. v. J. Ochoa & Brother et al., 26 P. R. R. 625, and Agenjo et al. v. Santiago Rosa et al., 26 P. R. R. 648, wherein the said question was carefully studied and decided and former jurisprudence was disapproved.

We will quote the syllabus in the Agenjo case:

"Deeds conveying property of minors executed by authorization of the district court of the district in which the property is not situated are not null and void, for that court has jurisdiction of the subject-matter and also competency to grant such authorization by virtue of the submission of the parties, according to sections 76 and 77 of the Code of Civil Procedure which were taken from the former Spanish Law of Civil Procedure.

190 "The Supreme Court of Spain and the General Directorate of Registrars have established the general rule that in matters ex parte the law gives jurisdiction to the court to which application is made; and as the authorization to convey property belonging to minors is an ex parte proceeding, the said doctrine is applicable to such authorization."

This being so, the action of the plaintiffs herein cannot prosper, for, the authorization conferred by the District Court of San Juan being valid and sufficient, the sale of their interests in the real properties in question was also a valid act.

For these reasons the appeal taken by plaintiffs must be dismissed; that taken by the defendant sustained; the judgment reversed, and the complaint dismissed, without costs.

EMILIO DEL TORO,
Associate Justice.

Judgment.

San Juan, Porto Rico, May 23, 1919.

This court has considered the transcript of record in this case and the arguments made by the attorneys for the parties, and for the reasons set forth in the foregoing opinion decides that it should dismiss and does hereby dismiss the appeal taken by the plaintiffs; that it should sustain and does hereby sustain the appeal taken by the defendants, reversing, as it does hereby reverse, the judgment appealed from rendered by the District Court of Ponce on January 30, 1918, dismissing, as it does hereby dismiss, the complaint, without special imposition of costs. Let this judgment be notified to the lower court in the manner and for proper ends.

Thus, we pronounce, command and sign, Mr. Justice Wolf dissenting.

JOSE C. HERNANDEZ.
EMILIO DEL TORO.
PEDRO DE ALDREY.
H. M. HUTCHISON.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, hereby certify that the foregoing opinion and
191 judgment agree with their originals, and in order to include this judgment in the proper record, I issue this certificate, in San Juan, Porto Rico, this twenty-eighth day of May, 1919.

JOAQUIN LOPEZ CRUZ,

Secretary-Reporter,

By FELIPE JANER, JR.,

Deputy-Secretary.

Appeal.

To the Honorable the Supreme Court of Porto Rico:

Come now plaintiffs herein by their attorneys J. A. and A. S. Poventud, and feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 23rd day of May, A. D. 1919, do hereby appeal from said decree to the United States Circuit Court of Appeals, First Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and pray that this appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the First Circuit sitting at Boston, Massachusetts, under the rules of such court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of said plaintiffs be made.

San Juan, P. R., November 12, 1919.

JOSE A. POVENTUD,
A. S. POVENTUD,
Attorneys for Plaintiffs.

Assignment of Errors.

Come now plaintiffs in the above-entitled cause and file the following assignment of errors, upon which they will rely upon the prosecution of the appeal in the above-named case, from the decree made by this Honorable Supreme Court on May 23, 1919:

Sole Error.

The Supreme Court of Porto Rico erred in holding that the District Court of San Juan was empowered and had jurisdiction to authorize Clementina Lugo Calzada, as the mother of her minor children, plaintiffs herein, to sell the real property herein involved and 192 which is situated within the Judicial District of Humacao; and likewise in holding that said sale so made was valid and in full force and effect, notwithstanding that said authorization was given by a court which was not the court within the territorial district of which the said real property herein involved was situated.

Wherefore, the plaintiffs and appellants herein pray that said decree be reversed and that said Supreme Court of Porto Rico be ordered to enter a decree reversing its decision and affirming that rendered by the District Court of the Judicial District of Ponce, Porto Rico.

San Juan, P. R., November 12, 1919.

JOSE A. POVENTUD,
A. S. POVENTUD,
Attorneys for Appellants.

Order.

San Juan, Porto Rico, November 18, 1919.

The appeal taken by plaintiff-appellants in the above-entitled cause Carlota Gonzalez Lugo et al v. Jose J. Benitez et al., to the United States Circuit Court of Appeals for the First Circuit from the judgment of this court of May 23, 1919, rendered in the said case, is hereby admitted; the bond to be furnished by the appellants to answer for such costs as may be incurred by the appellees by reason of said appeal, is hereby fixed in the sum of three hundred dollars (\$300); and it is further ordered, that a complete copy of the transcript of the record sent to this court by the District Court of Ponce, be forwarded to said Circuit Court of Appeals, for the purposes of this appeal, proceedings and other documents.

The court so ordered as witness the signature of the Chief Justice.

JOSE C. HERNANDEZ,
Chief Justice.

Attest:

JOAQUIN LOPEZ,
Secretary-Reporter.

Know all Men by these Presents: That we, Arturo Aponte, Jr. attorney for the plaintiffs herein and duly authorized by them to sign this obligation, as principal, and Francisco Noya and Manuel Gonzalez, as sureties, of the Municipality of Humacao, island of Porto Rico, are held and firmly bound unto defendants herein, in the above-entitled case mentioned, in the sum of three hundred dollars, lawful money of the United States, to be paid to them, and their respective executors, administrators, and successors; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, administrators, or assigns, by these presents.

Sealed with our seals and dated this 20th day of November, 1919.

Whereas, the above-named plaintiffs have prosecuted an appeal to the United States Circuit Court of Appeals for the First Circuit to reverse the judgment of the Supreme Court of Porto Rico in the above-entitled cause.

Now therefore, the condition of this obligation is such that if the above-named plaintiffs shall prosecute their appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

ARTURO APONTE, Jr.,
Attorney for Principals.
 FRANCISCO NOYA,
Surety.
 MANUEL GONZALEZ,
Surety.

ISLAND OF PORTO RICO,
Municipality of Humacao, ss:

On this 20th day of November, 1919, personally appeared before me, a notary public in the island of Porto Rico, Francisco Noya and Manuel Gonzalez, respectively known to me to be the persons described in the foregoing instrument as parties thereto, and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said Francisco Noya and Manuel Gonzalez, being respectively by me sworn, says each for himself, and not one for the
 194 other, that he is a resident and land holder of the Municipality of Humacao and that he is worth the sum of three hundred dollars over and above all his just debts and legal liability and property exempt from execution, and each of them pays taxes for real property in the Municipality of Humacao, which is worth more than the said sum of three hundred dollars.

And further, that these their respective and individual statements are absolutely faithful and true.

FRANCISCO NOYA.
 MANUEL GONZALEZ.

Subscribed and sworn to before me, a notary public of Porto Rico, by Francisco Noya and Manuel Gonzalez, both of age, property owners residing in this city, this 20th day of November, 1919, at Humacao, Porto Rico.

[SEAL.]

LEANDRO APONTE,
Notary Public.

(Internal Revenue Stamp of 25 cents cancelled.)

Order.

San Juan, Porto Rico, December 2, 1919.

It is hereby ordered that on the 8th instant the parties shall appear in open court when they shall make the arguments they may deem proper as to the approval of the foregoing bond; and the parties will also have the right to file written briefs for the consideration of the reasons which under the facts and law in this case may be in favor of the contention of plaintiff-appellants as to his capacity to subscribe the said bond, whereby his clients become liable for the costs of the appeal.

The court so ordered as witness the signature of the Chief Justice.

JOSE C. HERNANDEZ,
Chief Justice.

Attest:

JOAQUIN LOPEZ,
Secretary-Reporter.

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Motion.

Now appear the plaintiffs by their attorney, Arturo Aponte, Jr., and the defendants also by their attorney, Francisco Gonzalez Fagundo, and pray this court to admit and approve the bond filed by plaintiff-appellants to answer for such costs as may be incurred by reason of the appeal taken to the Circuit Court of Appeals for the First Circuit of the United States, the parties herein being of the opinion that the said bond fully answers for the costs of appellees.

Wherefore, they pray the court to admit this stipulation and approve the said bond so that same may serve all legal purposes.

Humacao, P. R., December 4, 1919.

ARTURO APONTE, JR.,
Attorney for the Plaintiffs.
FRANCISCO GONZALEZ,
Attorney for the Defendants.

Order.

San Juan, Porto Rico, December 9, 1919.

Upon consideration of the motion filed and subscribed by the attorneys for the parties herein this court approves the bond for three

hundred dollars furnished by Arturo Aponte, Jr., attorney for plaintiff-appellants, as principal, and Francisco Noya and Manuel Gonzalez, as sureties, to answer for such costs as may be incurred by defendant-appellees Jose J. Benitez, et al., in the appeal taken in this case to the Circuit Court of Appeals for the First Circuit of the United States.

The court so ordered as witness the signature of the Chief Justice.

JOSE C. HERNANDEZ,

Chief Justice.

Attest:

JOAQUIN LOPEZ,

Secretary-Reporter.

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to Jose J. Benitez et al. and Francisco Gonzalez Fagundo, their attorney:

You are hereby cited and admonished to be and appear at 196 and before the United States Circuit Court of appeals for the first Circuit, at Boston, Massachusetts, within sixty days from the date of this writ, pursuant to an appeal filed in the office of the Secretary Reporter of the Supreme Court of Porto Rico in a certain cause lately pending in said court, wherein Carlota Gonzalez Lugo et al. are plaintiffs and appellants, and Jose J. Benitez et al. are defendants and appellants, to show cause, if any there be, why the judgment rendered by this court in the said cause on the 23d of May, 1919, against the plaintiffs and appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Jose C. Hernandez, Chief Justice of the Supreme Court of Porto Rico, at the city of San Juan, Porto Rico, this 11th day of December in the year of Our Lord, 1919.

[SEAL.]

JOSE C. HERNANDEZ,

Chief Justice of the Supreme Court of Porto Rico.

Attest:

JOAQUIN LOPEZ,

Secretary-Reporter of the Supreme Court of Porto Rico.

Supreme Court of Porto Rico.

Marshal's Office.

Received this citation on its date and served the same by delivering personally a true copy thereof to Francisco Gonzalez Fagundo, attorney of record for the defendants in error, at Humacao, P. R., on December 17, 1919.

This at San Juan, P. R., December 18, 1919.

S. C. BOTHWELL, *Marshal.*

Translator's Certificate.

I, Felipe Janer, Jr., official interpreter and translator of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this court.

197 In testimony whereof, I have signed this certificate in the
1920. city of San Juan, Porto Rico, this nineteenth day of August.

FELIPE JANER, JR.,
*Interpreter and Translator of the
Supreme Court of Porto Rico.*

Clerk's Certificate.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant. I further certify that the translation of said papers and proceedings has been revised by the official interpreter and translator of this court, as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the city of San Juan, Porto Rico, this twenty-first day of August, 1920.

JOAQUIN LOPEZ,
*Secretary-Reporter of the Supreme
Court of Porto Rico.*

(Internal Revenue stamps for \$82.00 cancelled.)

Order.

San Juan, Porto Rico, February 4, 1920.

Upon motion duly made by attorneys for plaintiffs, appellants, the time for the filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of the record in this case is hereby extended until April 11, 1920.

It was so ordered and signed by Hon. Jose C. Hernandez, Chief Justice of the Supreme Court of Porto Rico.

JOSE C. HERNANDEZ,
Chief Justice.

Attest:

JOAQUIN LOPEZ,
Secretary-Reporter.

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A true copy.

JOAQUIN LOPEZ CRUZ,
Secretary-Reporter,

By FELIPE JANER, JR.,
Deputy Secretary.

Order.

San Juan, Porto Rico, April 9, 1920.

Upon motion duly made by attorney for plaintiffs and appellants, the time for the filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of record in this case is hereby extended until June 10th, 1920. It was so ordered by the court and the Chief Justice signs. Attest:

JOSE C. HERNANDEZ,
Chief Justice.

JOAQUIN LOPEZ,
Secretary-Reporter.

A true copy.

JOAQUIN LOPEZ CRUZ,
Secretary-Reporter,

By FELIPE JANER, JR.,
Deputy Secretary.

Order.

San Juan, Porto Rico, June 14, 1920.

Upon motion duly made by attorney Jose A. Poventud for appellants, the time for filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of the record in this case is hereby extended until July 9th, 1920.

The court so ordered it and the Chief Justice signed. Attest:

JOSE C. HERNANDEZ,
Chief Justice.

JOAQUIN LOPEZ,
Secretary-Reporter.

A true copy.

JOAQUIN LOPEZ CRUZ,
Secretary-Reporter,

By FELIPE JANER, JR.,
Deputy Secretary.

Order.

San Juan, Porto Rico, July 9, 1920.

Upon motion duly made by attorney for appellants the time for filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of the record in this case is hereby extended until August 8th, 1920.

199 & 200 The court so ordered it and the Chief Justice signed.

Attest:

JOSE C. HERNANDEZ,
Chief Justice.

JOAQUIN LOPEZ,
Secretary-Reporter.

A true copy.

JOAQUIN LOPEZ CRUZ,
Secretary-Reporter,

By FELIPE JANER, JR.,
Deputy Secretary.

Order.

San Juan, Porto Rico, August 6, 1920.

Upon motion duly made by attorney for appellants, the time for filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of the record in this case is hereby extended until August 28, 1920.

The court so ordered and the Acting Chief Justice signs. Attest:

ADOLPH G. WOLF,
Acting Chief Justice.

JOAQUIN LOPEZ,
Secretary-Reporter.

A true copy.

JOAQUIN LOPEZ CRUZ,
Secretary-Reporter,

By FELIPE JANER, JR.,
Deputy Secretary.

Order.

San Juan, Porto Rico, August 23, 1920.

Upon motion duly made by attorney for the appellants the time for filing in the United States Circuit Court of Appeals for the First Circuit of the transcript of the record in this case is hereby extended until September 11, 1920.

It was so ordered and signed by the Acting Chief Justice of the Supreme Court. Attest:

ADOLPH G. WOLF,
Acting Chief Justice.

FELIPE JANER, JR.,
Acting Secretary-Reporter.

201 & 202 United States Circuit Court of Appeals for the First
Circuit, October Term, 1921.

No. 1478.

CARLOTA GONZALEZ LUGO et al., Plaintiffs, Appellants,
v.

JOSE J. BENITEZ et al., Defendants, Appellees.

Appeal from the Supreme Court of Porto Rico.

Before Bingham, Johnson, and Anderson, JJ.

Opinion of the Court.

November 1, 1921.

Per Curiam:

This is an appeal from a final judgment of the Supreme Court of Porto Rico reversing a judgment of the District Court of Ponce.

The only question raised by the appeal is whether authorization to sell the property of minors can be given by the District Court of a district in which the property is not situated.

In *Agenjo et al. v. Agenjo et al.*, handed down by us at this term, we have determined that question in the negative. Other questions were raised in the District Court and covered by its Judgment. These were not dealt with by the Supreme Court. We do not pass upon them, but leave them to be dealt with after the case has been remanded.

The judgment of the Supreme Court is reversed, with costs to the appellants in this court, and the case is remanded to that court for further proceedings not inconsistent with this opinion, as amplified and explained by the opinion in *Agenjo et al. v. Agenjo et al.*, *supra*.

203 United States Circuit Court of Appeals for the First Circuit,
October Term, 1921.

No. 1414.

FELIX FABIAN AGENJO et al., Plaintiffs, Appellants,

v.

JUANA AGENJO et al., Defendants, Appellees.

Appeal from the Supreme Court of Porto Rico.

Before Bingham, Johnson, and Anderson, JJ.

Opinion of the Court.

November 1, 1921.

JOHNSON, J.:

This case is here by appeal from a final judgment of the Supreme Court of Porto Rico. The question presented is whether, under Section 229 of the Civil Code of Porto Rico, power to authorize the sale of the property of minors is exclusive in the District Court of the judicial district where the property to be sold is situated. This section, in 1910, when judicial authorization was given, was as follows:

"Sec. 229. The exercise of the patria potestas does not authorize the father or mother to alienate or burden real property which in any manner belongs to the child, and over which either of them may have the administration, except after securing judicial authorization, which shall be accorded by the district court of the judicial district where said property is situated, upon proof being furnished as to the necessity or utility of such transfer or burden."

204 The Civil Code, of which this forms a part, took effect in Porto Rico on July 1, 1902, superseding on that date the Spanish Civil Code.

The facts briefly stated are these: The plaintiffs, who were minors, at the death of their father, a resident of Porto Rico, inherited from him certain real estate situated within the judicial district of Humacao, on the island of Porto Rico. In September, 1910, their mother, in the exercise of patria potestas, filed a petition in the District Court of San Juan, asking for authority to convey the minors' interests in this real estate. Authorization was granted and by virtue of the same the real estate of the minors was conveyed.

Through a guardian ad litem an action was brought to adjudge the conveyance null and void and to decree that the party in possession by virtue of the said sale deliver same up to the plaintiffs free of encumbrance and account for rents and profits. There was a judgment for the plaintiffs in the district court, but the Supreme Court of Porto Rico reversed this and dismissed the com-

plaint. It based its decision upon its interpretation of Sections 76 and 77 of the Code of Civil Procedure of Porto Rico, which are as follows:

"Sec. 76. In accordance with its jurisdiction, a court shall have cognizance of the suits to which the maintenance of all kinds of actions may give rise, when the parties may have agreed to submit the suit to decision of court.

"Sec. 77. The submission shall be understood to be made:

"1. By the written agreement of the parties.

"2. By the plaintiff through the mere act of applying to the court and filing the complaint.

"3. By the defendant when, after his appearance in court, he takes any step other than to request that the trial be held in the proper court."

The Code of Civil Procedure went into effect in Porto Rico on July 1, 1904, and the Supreme Court of Porto Rico, construing the above sections in connection with Articles 56, 57 and 58 of the Spanish Code of Civil Procedure, and Article 164 of the Spanish Civil Code, formerly in force in Porto Rico, and also decisions of the Supreme Court of Spain and of its General Directorate of Registries, in regard to analogous provisions of Spanish law, has held that, notwithstanding the express provision of Section 229 of the Civil Code, authorization for the sale of real estate of minors can be granted by the court of any district on the island of Porto Rico, provided the judge thereof exercises civil jurisdiction and is competent to have cognizance of questions similar to and of the same kind as the one submitted.

We cannot assent to this view. Whatever may have been the law and practice under the Spanish Civil Code, it is evident that, when the Legislative Assembly of Porto Rico enacted Section 229 of the Civil Code, it intended to confine the authorization for the sale of real estate of minors to the district court for the district in which the property is situated. We are confirmed in this view by the fact that the Legislative Assembly, in 1907, made an amendment which in clear and unambiguous language makes certain that this was its intent. The Act, as it was first adopted, contained a provision that the authorization should be given by the district court of the domicile of the minors; but in 1907 it was amended so that the exercise of the patria potestas would not authorize the father or mother to alienate property belonging to the child, except after securing judicial authorization "which shall be accorded by the District Court of the judicial district where said property is situated". Although this section was again amended in 1911, this particular provision was not changed.

We have held in *Martorell y Torrens et al. v. J. Ochoa y Hermano et al.*, that under the old Spanish codes the law of voluntary submission, whereby a suitor may choose his forum, did not apply to applications of parents in exercise of patria potestas to sell the real

estate of minor children, and that authorization for the sale of their real estate must be granted by the District Court of the domicile of the minors in accordance with Article 164 of the Spanish Civil Code.

It therefore follows that Articles 76 and 77, which are analogous to Articles 56 and 58 of the old Spanish Code, must receive the same interpretation, although we do not find in the Code of

206 Civil Procedure in force in 1907 any provision similar to that contained in Section 71 of the old Spanish Code, which expressly exempts from the operation of the articles relating to submission, cases which are specifically covered by other Code provisions.

We think it clear that the Legislative Assembly of Porto Rico, when it adopted the present Civil Code and the Code of Civil Procedure, intended to remove from the operation of Sections 76 and 77 of the latter, applications for authorization to sell the real estate of minors.

The amendment of Section 229, made in 1907, designating the district court of the district in which the land is situated as the court to make the authorization instead of the place of the domicile of the minors, evinces a purpose to have the important matter of the alienation of a minor's property passed upon by a court which would possess, or could easily obtain, knowledge of its value. It might authorize a sale at public auction, and, if this be done, the sale is to be had in the presence of and under the direction of the marshal of the district after "publication of the corresponding edicts in the customary places and in a newspaper having a circulation in the district." Judicial Proceedings, Title V, Section 82. The only reasonable interpretation to be placed upon Sections 80, 81 and 82 of this title is that all the proceedings are to be had in the district where the land is situated.

Section 229 was again amended in 1911, and made to extend to the alienation or encumbrance of personal property above the value of five hundred dollars, and making the authorization of the district court wherein the property is situate necessary.

The Legislative Assembly conferred upon the parent power to alienate the property of a minor under patria potestas, after obtaining authorization in a certain manner, which cannot be departed from.

By the Organic Act, passed by the Congress of the United States for the island of Porto Rico and approved April 12, 1900, the laws then in force in Porto Rico were continued in force; but Section 15 provides:

207 & 208 "That the legislative authority hereinafter provided shall have power by due enactment to amend, alter, modify or repeal any law or ordinance, civil or criminal, continued in force by this Act, as it may from time time see fit."

It was within the undoubted power of the Legislative Assembly of Porto Rico to adopt or reject any of the provisions of the Spanish Civil Code in force at the time the American Civil Code was adopted in 1902; and if, in the exercise of a wise public policy, it provided

in clear and unambiguous language that judicial authorization for the sale of land of minors could only be given by the court of the district in which the land is situated and where knowledge of its value could be most easily obtained and the interests of the minors most safely guarded, this cannot be overridden by judicial interpretation. We think not only that the language is clear, but, also, looking at the history of the Act and the amendments made to it, that it clearly expresses the legislative intent.

The judgment of the Supreme Court of Porto Rico is reversed, with costs in this court to the appellants, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

209 On October 18, 1921, this case came on to be heard and was fully heard by the court, Honorable George H. Bingham, Honorable Charles F. Johnson and Honorable George W. Anderson, Circuit Judges, sitting.

Thereafter, to wit, on the first day of November, A. D. 1921, the opinion of the court (page 201) was announced and the following Final Decree was entered:

Final Decree.

November 1, 1921.

This cause came on to be heard October 18, 1921, upon the transcript of record of the Supreme Court of Porto Rico, and was argued by counsel:

Upon consideration whereof, It is now, to wit, November 1, 1921, here ordered, adjudged and decreed as follows: The judgment of the Supreme Court is reversed with costs to the appellants in this court, and the case is remanded to that court for further proceedings not inconsistent with the opinion passed down this day, as amplified and explained by the opinion in Agenjo et al. v. Agenjo et al.

By the Court,

ARTHUR I. CHARRON,
Clerk.

Thereafter, to wit, on the tenth day of January, A. D. 1922, the following Motion for Stay of Mandate was filed:

Motion for Stay of Mandate.

[Filed January 10, 1922.]

Now come the defendants, appellees, in the above-entitled cause and represent to this Honorable Court that they intend to file a petition in the Supreme Court of the United States for a writ of certiorari.

Wherefore they move that the issue of the mandate in the above-entitled cause be stayed pending the determination by said Supreme

Court of their petition for said writ, or until the further order of this court.

By Their Attorney, JOSE R. F. SAVAGE.

210 On the same day, to wit, on the tenth day of January, A. D. 1922, the following Order of Court was entered:

Order of Court.

January 10, 1922.

Upon motion of appellees, setting forth that they propose to file a petition in the Supreme Court for a writ of certiorari, It is ordered that the mandate in this case be, and the same hereby is, stayed until further order of this court, upon the condition that said petition is duly filed and presented within the time prescribed by the rules and practice of the Supreme Court of the United States.

By the Court,

ARTHUR I. CHARRON,
Clerk.

Clerk's Certificate.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 210, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including January 12, 1922, in the cause in said court numbered and entitled: No. 1478, Carlota Gonzalez Lugo et al., Plaintiffs, Appellants, v. Jose J. Benitez et al., Defendants, Appellees.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twelfth day of January, A. D. 1922.

[Seal of the United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON,
Clerk.

211 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the First Circuit, Greeting:

Being informed that there is now pending before you a suit in which Carlota Gonzalez Lugo et al. are appellants, and Jose J. Benitez et al. are appellees, No. 1478, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Supreme Court of Porto Rico, and we, being willing for certain

reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the sixth day of April, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,

Clerk of the Supreme Court of the United States.

213 [Endorsed:] File No. 28,683. Supreme Court of the United States, October Term, 1921. No. 728. Jose J. Benitez Diaz, in his own right, etc., vs. Carlota & Clementina Gonzalez, etc., et al. Writ of certiorari.

214 *Return on Writ of Certiorari.*

United States Circuit Court of Appeals for the First Circuit.

And now here the Judges of the United States Circuit Court of Appeals for the First Circuit make return to this writ by annexing hereto and sending herewith a stipulation between counsel for the respective parties in the cause in the Supreme Court of the United States wherein this writ of certiorari issued that the certified copy of the transcript of record now on file in the office of the Clerk of the Supreme Court, shall constitute the return of the Clerk of the Circuit Court of Appeals for the First Circuit to the writ of certiorari issued therein.

In testimony whereof, I, Arthur I. Charron, Clerk of said United States Circuit Court of Appeals for the First Circuit, hereto set my hand and affix the seal of said court, at Boston, in said First Circuit, this twentieth day of April, A. D. 1922.

[Seal of the United States Circuit Court of Appeals, First Circuit.]

ARTHUR I. CHARRON,
Clerk.

215

11517.

United States Circuit Court of Appeals, First Circuit.

No. 1478.

CARLOTA GONZALEZ LUGO et al., Appellants,
against

JOSE J. BENITEZ et al., Appellees.

It is hereby stipulated by and between the attorneys for the parties hereto that the certified transcript of the record on file in the office of the Clerk of the Supreme Court of the United States which was sent by the Clerk of this Court to the Supreme Court of the United States at Washington be deemed and taken to be the return to the writs of certiorari issued by the United States Supreme Court to the Judges of the United States Circuit Court of Appeals for the First Circuit on the sixth day of April, 1922, and that a certified copy of this stipulation be sent by said Clerk of the United States Circuit Court of Appeals for the First Circuit as part of said return to said writ of certiorari.

It is further stipulated that nothing herein contained shall be construed as a consent on the part of appellants to the issuance of the writ of certiorari, or as a waiver of appellants' right to oppose, or to move to dismiss or to quash the said writ on any grounds.

Dated, April 11th, 1922.

GEO. B. HAYES AND
FRANK ANTONSANTI,

Attorneys for Appellants.

JOSE R. F. SAVAGE,

CURTIS, MALLET-PREVOST & COLT,

Attorneys for Appellees.

A True Copy.

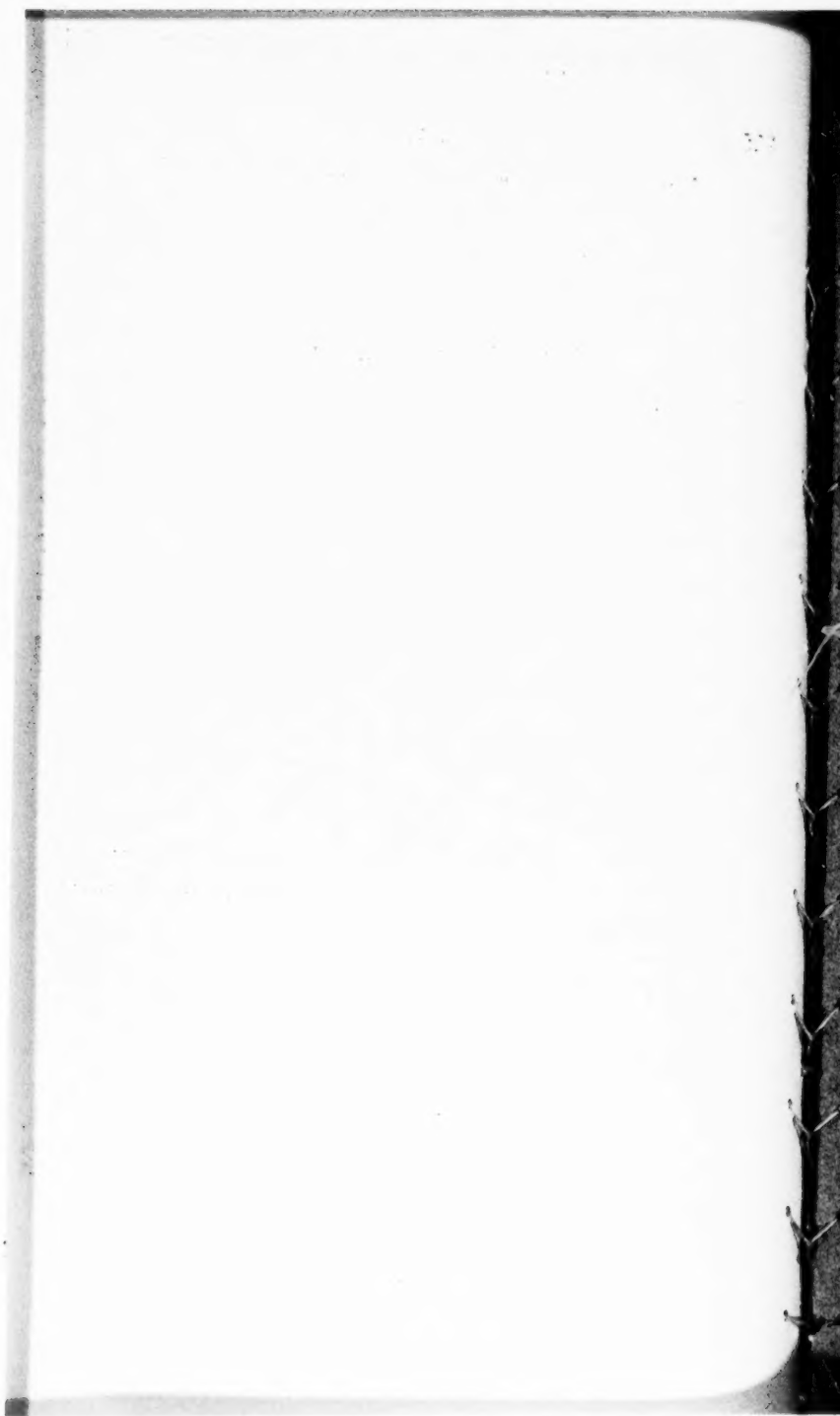
Attest:

[Seal of the United States Circuit Court of Appeals, First
Circuit.]

ARTHUR I. CHARRON,
Clerk.

216 [Endorsed:] File No. 28,683. Supreme Court U S.,
October Term, 1921. Term No. 728. Jose J. Benitez Diaz,
&c., Petitioner, vs. Carlota & Clementina Gonzalez, &c., et al. Writ
of certiorari and returns. Filed April 22, 1922.

(8300)



Supreme Court of the United States

WALTER P. REAGAN, JR.

THE STATE

JOSE J. BENTLEY, alias of his own name and aliases, with
other persons, have been indicted and charged with the
murders of CARLOTTA JONES and JOHN DEWITT ALABAMA, and
with the murders of BENTLEY BENTLEY and JOHN BENTLEY
ORTEGA.

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IN THE
Supreme Court of the United States,

OCTOBER TERM, 1922.

No. 263.

JOSE J. BENITEZ DIAZ, in his own right
and as father with PATRIA POTESTAS
over his minor unemancipated chil-
dren CARLOTA, JOSEFA and JOSE
BENITEZ SAMPAYO, ARCADIA and
TEODOSIA BENITEZ SAMPAYO and
DIEGO GARCIA ORTEGA,

Petitioners,

AGAINST

CARLOTA and CLEMENTINA GONZALEZ Y
LUGO, represented by their Guardian
ad litem, ARTURO APONTE, JR., and
MANUEL GONZALEZ Y LUGO,

Respondents.

**BRIEF
ON BEHALF OF
PETITIONERS.**

Preliminary Statement of Case.

This Court on April 6th, 1922 (66 L. Ed. 363, 42 S. C. 313), granted a writ of certiorari to the Judges of the United States Circuit Court of Appeals for the First Circuit (Rec. p. 167), to which return was duly made on April 20th, 1922 (Rec. p. 168).

The opinion of the Circuit Court of Appeals is reported at 276 Fed. 108.

The sole question involved (Rec. p. 162) is whether the sale in 1908 of certain interests in real property in Porto Rico belonging to the respondent minors shall be declared null and void *ab initio* because the judicial authorization of such sale obtained by their mother as their natural guardian was accorded by the District Court of her and their domicile, under the Spanish doctrine of "submission", to be found in Sections 76 and 77 of the Porto Rican Code of Civil Procedure, and not by the Court of the situs of the land as specified by Section 229 of the Civil Code.

The action was originally brought in the District Court of Ponce, Porto Rico, on September 8, 1913 (Rec. p. 5), by the respondents-plaintiffs below, two of them being minors and represented by their guardian *ad litem*, to recover their interests in said real estate. The District Court rendered an opinion (Rec. p. 16) and judgment (Rec. p. 31) in favor of the plaintiffs. This was reversed by the Supreme Court of Porto Rico (Rec. p. 152) which in turn has been reversed by the Circuit Court of Appeals (Rec. p. 162, 276 Fed. 108).

PART I.**Statement of Facts.**

In 1908, Clementina Lugo y Calzada, the mother, as natural guardian of the two minor respondents-plaintiffs below and of two other children who were then also minors (Rec. pp. 4, 11) and one of whom is also one of the respondents, arranged to sell real estate in Humacao in which they had inherited undivided interests, to the petitioner Benitez for \$17,600. (Rec. p. 52) to pay certain debts and for other necessary purposes of the Estate (Rec. p. 137). She applied for and obtained a judicial authorization of this sale by the District Court of San Juan, Section 1 (Rec. pp. 48, 135). Not only were the mother and the minors then domiciled at Rio Grande in the district of San Juan (Rec. pp. 18, 50, 142) but the husband and father was domiciled there in ward Mameyes Segundo, at the time of his death (Rec. pp. 72, 83, 86, 137). The sale was made, the money paid and Benitez made both a lease and a mortgage of the premises (Rec. pp. 5, 62, 63, 149). Referring to a statement made by counsel for respondents upon the argument, it appears that the only evidence as to the value of the land submitted by the plaintiffs below was confined to its value at the time of suit in 1913 and not at the time of the sale in 1908, and to the amount of profits earned in the interim (Rec. pp. 103-109). The authorization named an upset price of \$48,000. for six parcels, only three of which were sold to Benitez for \$17,600. (Rec. pp. 48, 50). No contention has been made at any stage of the case that this was not an adequate price. (See Rec. pp. 21, 27, 28, 37, 155.)

One of the infants, when he became of age, ratified the sale (Rec. p. 19). The others brought this action, to set the sale aside as to them, demanding restitution to them of their share, viz: one-fourth of the premises, which share they estimated to be worth by then over \$10,000., and an accounting to them for rents and profits estimated at \$8,500. (Rec. p. 5).

Petitioners-defendants below duly appeared and answered, alleging that the District Court of San Juan, Section 1, was competent to authorize the sale of the property belonging to the said minors (Rec. pp. 6-10). The Judge of the District Court of Ponce, Porto Rico, sitting without a jury, found that the authorization granted by the District Court of San Juan, Section 1, and the deed of sale to petitioner, Jose J. Benitez Diaz, in so far as they related to the joint interests of the three plaintiffs in the said property, were null, ineffectual and of no legal effect or value (Rec. pp. 16-31). Accordingly he decreed that petitioners-defendants below, should reconvey to respondents-plaintiffs below their portion of the premises and restore to respondents-plaintiffs below, the rents and profits from the said property from the 15th day of September, 1914, the amount thereof to be determined in a separate action; and that the respondents-plaintiffs below, pay to petitioner, Jose J. Benitez Diaz, and his children, the part of the purchase price received by each of them (Rec. pp. 31-34).

Both petitioners and the respondents appealed from the said judgment of the District Court of Ponce, Porto Rico, to the Supreme Court of Porto Rico (Rec. pp. 36-37), which, by a vote of four to one, reversed the judgment of the District Court of Ponce, Porto Rico, and dismissed the complaint on

the ground that the District Court of San Juan, Section 1, was competent to grant the authorization for the sale of the said property according to Sections 76 and 77 of the Code of Civil Procedure taken from the former Spanish Law of Civil Procedure, the parties to the application to such authorization having submitted themselves to the jurisdiction of that Court (Rec. pp. 152-154).

The respondents-plaintiffs below, petitioned the Supreme Court of Porto Rico for leave to appeal to the United States Circuit Court of Appeals, First Circuit, and annexed to their petition a single assignment of error, to wit: That the Supreme Court of Porto Rico erred in holding that the District Court of San Juan had jurisdiction to authorize a sale of minors' property situated within the judicial district of Humacao; and that said sale so made was valid (Rec. p. 155).

The Supreme Court of Porto Rico thereupon made an order allowing an appeal (Rec. p. 155) and the case came on and was fully argued before the United States Circuit Court of Appeals, First Circuit, which on November 1, 1921, rendered its opinion and judgment (276 Fed. 108), holding that the only court of competent jurisdiction to authorize the sale of property of minors was the court of the District in which the property was situated, and that the parties to the *ex parte* application for such authorization could not submit themselves to the jurisdiction of the court of any other District (Rec. pp. 162-166).

PART II.

Synopsis of statutes (to 1907) and judicial interpretation (to 1905).

Section 229 of the Civil Code of Porto Rico, upon which the complaint of the respondents-plaintiffs below was based was a "reproduction with slight modifications" (*Gonzalez v. Acha*, 21 P. R. R. 124, 126) of Section 164 of the Spanish Civil Code which was effective in Porto Rico from January 1, 1890, to July 1, 1902, and which read as follows:

"Section 164.—The father or the mother in a proper case, cannot alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity and after authorization from the Judge of the domicile, hearing the Department of Public Prosecution, excepting the provisions which, with regard to the effects of transfers, the Mortgage Law establishes."

When reenacted, effective July 1, 1902, as Section 229 of the Porto Rican Civil Code, the section read as follows:

"Section 229.—The father and the mother cannot alienate any real property belonging to their children, the usufruct of which they receive or for which they have the administration, nor can they burden the same except by mutual consent, and after securing the authorization of the District Court of their domicile."

It is obvious that the intent and purpose of both sections was the same and that except for the omission from the Porto Rican Statute of the last

three and a half lines of the Spanish statute which have no direct bearing on the questions at bar, the changes made in 1902 were chiefly changes of form and not of substance and could have no effect upon the question here in dispute.

While the above-quoted Section 164 of the Spanish Civil Code was in effect and thereafter for two years also while the above-quoted Section 229 of the Porto Rican Civil Code was in effect, viz: from July 1, 1902, until July 1, 1904, the Spanish Code of Civil Procedure was in force and provided with reference to the doctrine of "Submission" in Sections 56, 57 and 58 as follows:

"Article 56. Any judge impliedly or expressly agreed upon by the litigants shall be competent to take cognizance of the suits arising from actions of all kinds.

This submission, however, can only be made to a judge exercising ordinary jurisdiction and who is competent to take cognizance of questions similar to and of the same kind as the one submitted.

"Article 57. By an express submission shall be understood that made by the parties in interest clearly and in definite terms renouncing their own rights, and unequivocally designating the judge agreed upon to determine the question.

"Article 58. An implied submission is made:

1. By the plaintiff, by the act of filing his complaint before the judge.

2. By the defendant, when, after his appearance is entered in the action, he takes any further steps therein, except to formally object to the jurisdiction of the judge by declinature."

These sections were "reproduced" in Sections 76 and 77 of the Porto Rican Code of Civil Pro-

cedure, effective July 1, 1904 (*Sola v. Registrar*, 8 P. R. R. 205, 207), and were in force at the time of the authorization in the case at bar as follows:

"Section 76. In accordance with its jurisdiction, a court shall have cognizance of the suits to which the maintenance of all kinds of actions may give rise, when the parties may have agreed to submit the suit to decision of court.

"Section 77. The submission shall be understood to be made:

1. By the written agreement of the parties.
2. By the plaintiff through the mere act of applying to the court and filing the complaint.
3. By the defendant, when, after his appearance in court, he takes any step other than to request that the trial be held in the proper court."

Prior to the decision of any of the Porto Rican cases which will be cited in this brief, these sections as they applied to the alienation of the property of minors, had been further clarified by the enactment of Section 80 of the Special Proceedings Act of March 9, 1905 (Laws of Porto Rico, 1905, p. 138), as follows:

"Sec. 80. In all cases where, according to the provisions of the Civil Code, the parents or the tutors of a minor shall be in need of judicial authorization to do anything referring to the keeping of the said minor or of his properties, a petition shall be filed with the district court of competent jurisdiction setting forth under oath the necessity of the object sought, the advantage ensuing therefrom to the minor, and the reasons for the request."

Counsel for respondents have argued that the expression "district court of competent jurisdic-

tion" in the above Section 80 must necessarily refer to the court specified in Section 229 of the Civil Code. This, however, is arguing in a circle. It is to be noted from the second paragraph of Article 56 *supra*, that it was *always* an element of the Spanish doctrine of "submission" that the submission must be made to a court which was "competent", viz: one which was exercising similar jurisdiction. Section 80 of the Special Proceedings Act did no more than put back into Porto Rican procedure a proviso which was already a part of the previous Spanish procedure and which was omitted when Sections 76 and 77 of the Porto Rican Code of Civil Procedure were enacted.

Counsel for respondents have also tried to argue from the use of the words "suits" and "parties" and the word "agreement" in Sections 76 and 77 that these sections could apply only to adversary proceedings and not to *ex parte* applications. The word "suits", however, appears in both statutes, the word "parties" only corresponds to the word "litigants" in the Spanish statute; the words "expressly agreed upon" in the second line of Article 56 and the whole of Article 57 have been crystallized into subdivision 1 of Section 77, leaving subdivisions 2 and 3 to correspond with subdivisions 1 and 2 of Article 58. As will be shown below, the word "plaintiff" has been judicially construed by the Spanish and Porto Rican courts to include "petitioner" or "applicant". In *ex parte* applications, the submission is complete upon compliance with subdivision 1 of Article 58 or of subdivision 2 of Section 77 as the case may be. When there is a defendant party and provided there is no *written* agreement under subdivision 1 of Section 77, subdivision 3 must also be complied with in order to have the agreement of parties required by Section 76, but when there are no parties but the plaintiff or applicant, his "mere act of applying to the

court" as provided in subdivision 1 completes the submission.

The foregoing construction of the two Codes of Civil Procedure is confirmed by the Supreme Court of Porto Rico in the case of *Gomez v. Toro*, 23 P. R. R. 596, 598, in which the Court points out that Sections 76 and 77 "are of an origin different from that of the code as a whole".

Judge Wolf in his dissenting opinion (p. 603) indicates that the decision of four of the five judges in that case went on the ground that Sections 76 and 77 were "a reenactment of similar provisions of the Spanish Code of Civil Procedure and hence *it must be presumed that they were adopted with the construction put upon them by the Spanish Courts and commentators*". In its opinion, the court says:

"As may be seen, section 76 of the new code is the same as article 56 of the old law. The final paragraph of the latter is condensed in the words 'In accordance with its jurisdiction' of the former, and instead of the words 'expressly or impliedly' of the first paragraph of article 56, section 76 refers to submission in general.

"Section 77 of the new code includes all the cases covered by articles 57 and 58 of the former code, but, following the limitations of article 56, the Spanish legislators define in articles 57 and 58 cases of express and implied submission, while the Porto Rican legislators, in harmony with the provision of section 76, include in section 77 all cases of submission in general, although it is clear that subdivision 1 of section 77 covers express submission and subdivisions 2 and 3 of the same refer to implied submission, * * * The new code preserves the principle of the old law but clothes it in simpler form. * * * In the new Code of Civil Procedure the Porto Rican legis-

lators intended to preserve, and did preserve, the principle of the old code regarding previous submission of the parties. The said provision is clear and has been construed repeatedly, as we have seen, to mean that previous submission is a lawful agreement and when made in legal form is binding upon the person who submits himself, and even upon his heirs. Such construction was thoroughly understood and practiced in Porto Rico and is not contrary to honesty, good usage or public policy."

Moreover, not only is the complete Spanish doctrine of submission to be found enacted in Sections 76 and 77, but the Porto Rican enactment is even more absolute and unrestricted than the original Spanish statute, having actually omitted two limitations contained in the Spanish laws.

Article 63 of the Spanish Law of Civil Procedure itself contained in numerous subdivisions specific provisions as to the competency of the courts in various enumerated proceedings among which that relating particularly to the alienation of the property of minors was as follows:

"Article 63. In order to determine competency, in cases other than those mentioned in the foregoing Articles, the following rules shall apply:" * * *

"Subdivision 23. In authorizations for the sale of property of minors or incapacitated persons, a competent Judge shall be that of the place where the property may be situated, or that of the domicile of the persons to whom it belongs."

In addition to this, there was Article 71 which, if the case were one of first impression, to be decided on its merits, might be thought to expressly prevent the doctrine of submission set out in Articles 56, 57 and 58 from applying to the alienation of the

properties of minors in view of the special rule to be found in Section 164 of the Civil Code, *supra*. Article 71 read as follows:

"Article 71. The rules established in the foregoing Articles shall be understood without prejudice to the provisions of Law in special cases."

Notwithstanding these two specific provisions of Articles 63 and 71 of the Spanish Law of Civil Procedure (which were not law in Porto Rico after 1904), and the specific requirement of Section 164 of the Civil Code, it was the well established Spanish law under the construction of the foregoing Articles of the Law of Civil Procedure and of the Civil Code by the Courts of Spain, that in all matters of voluntary jurisdiction (*ex parte* matters) any court having jurisdiction of similar matters became competent to entertain the application for such an authorization by the voluntary submission of the applicant, even though a certain court was designated by another section of the Law of Civil Procedure or by a special statute.

Decisions of the *Supreme Court of Spain* of July 22, and September 30, 1875 (32 Jur. Civ. 424 and 491); October 6, 1876 (34 *idem.*, 677), and June 2, 1877 (37 *id.*, 107);

Decisions of the *General Directorate of Registries* of January 22, 1886; 3 *Collección Oficial*, 451; May 9, 1889, 4 *id.* 327;

1. *Manresa's Commentaries on the Law of Civil Procedure* (Ed. 1910), pp. 217-218, and 240-241;
2. *Manresa's Commentaries on the Civil Code* (Ed. 1907), pp. 44, 45.

The Spanish law on this point is stated in the decision of the Supreme Court of Spain of September 30, 1875, *supra*, with reference to an *ex parte* application incidental to certain probate proceedings as follows (our translation) :

"It is decided that in matters of voluntary jurisdiction no question of competency arises because Rule 1 of Article 1208 of said law of Civil Procedure confers jurisdiction upon that Judge before whom the petition was filed, and that this question may only be raised when said matters, losing their character of matters of voluntary jurisdiction, become matters of litigated jurisdiction as has been declared by this Supreme Tribunal in repeated decisions."

The accepted Spanish legal interpretation of these statutes and of the above decisions of the Supreme Court of Spain is to be found in Manresa's Commentaries, cited above, which are quoted by the Supreme Court of Porto Rico in the case of *Martorell v. Ochoa*, 26 P. R. R. 625, 629, as follows :

"Are these special rules of jurisdiction so absolute as to exclude the express or implied submission of the parties in all cases? * * * Doubt might arise in the application of the other rules because they refer to proceedings which, in the strict sense of the term, are not suits at the time of their commencement, such as attachments, unlawful detainer, redemptions, injunctions, and surveys, to which rules 12, 13, 14 and 15 refer, and *ex parte* proceedings, which are referred to in the other rules." * * * "This doctrine (referring to above judgments of July 22 and September 30, 1875; October 6, 1866 and June 2, 1877), is based on

the submission of the suitor by the mere act of presenting his petition to the judge, and although the new law does not re-enact the said rule (rule 1 of Article 1208), article 56 gives preferential jurisdiction in all kinds of actions to the judge to whom the interested parties may have submitted themselves. Hence we are of the opinion that the foregoing jurisprudence of the Supreme Court should be considered effective." *Manresa v. Navarro*, Law of Civil Procedure, Vol. 1, pp. 217-218, Ed. 1910.

Specifically discussing the question as to whether the provisions of the Law of Civil Procedure (including the law of submission represented by Articles 56, 57 and 58 of the Spanish Law of Procedure) were applicable to applications under Section 164 of the Civil Code for authorization of the alienation of the properties of minors as well as other *ex parte* matters, Manresa says (Rec. p. 25) :

"As regards our Code there can be no doubt that for the alienation or encumbrance of real estate the authorization of the court is indispensable. The code requires that such authorization should be obtained from the judge of the domicile, but as jurisdiction is a matter falling under the adjective law and the final provision of the code only repeals the common civil law, we think that paragraph 23 of article 63 of the Law of Civil Procedure, which provides that authorization for the sale of property of minors or incapacitated persons shall be given by the judge of the place where the property may be situated, or of the domicile of the persons to whom it belongs, continues in force and is complementary to this article. However, to avoid any question it will be most prudent to apply to the judge of the domicile. The procedure to be observed is that estab-

lished in Title 11, first part of Book III of the Law of Civil Procedure."

Thus, while Manresa suggests the advisability of applying at the domicile, as a matter of abundant caution, nevertheless, taking the two quoted passages together, it is evident that he gives it as his mature and considered judgment that under the Spanish law a submission of the parties will override the express provision of the Statute governing the alienation of minors' rights. Furthermore, he declares it to be also his expert opinion that this is the meaning and intent of the Spanish decisions hereinbefore quoted and cited in this brief. As against this declaration of the law there is not the slightest indication in any of the Spanish authorities that the law of submission in *ex parte* matters was subject to any exception covering cases where the rights of minors were involved. It is, on the contrary, everywhere declared to be a general principle of the Spanish law of procedure generally applicable without limitation or restriction.

In the case decided by the General Directorate of Registries on January 22, 1918, the registrar refused to record a declaration of heirs made by a court other than that of the last place of residence of the deceased which was particularly specified by a section of the Law of Civil Procedure itself. The General Directorate reversed the registrar and in so doing completely disposed of the contention of the counsel for respondent that the decisions of the Spanish Supreme Court which we have cited above were based on Rule 1 of Article 1208 of the Law of Civil Procedure of 1855 which was not re-enacted in the Law of 1886 which became law in Porto Rico in 1890. In view of the importance of this decision

it is quoted in full as set out in the opinion in *Martorell v. Ochoa*, 26 P. R. R., 625, 633:

"It is considered that in order to decide the other questions discussed in the present appeal it is necessary to ascertain whether the special rules of jurisdiction established in article 63 of the Law of Civil Procedure are so absolute as to exclude in all cases the express or implied submission of the parties.

"It is considered that the wording of said article 63 itself serves to solve that problem, for in providing that its rules shall apply in cases other than those mentioned in the preceding articles, it implies that the said rules are not applicable to the cases to which the preceding articles refer; and as one of these is article 56, which establishes the submission of the parties as a general principle in the matter of jurisdiction, it is evident that when there is such submission the special rule of jurisdiction cannot be invoked.

"It is considered that, although it can be objected that said article 56 refers to suits, and *ex parte* proceedings, such as is that which originated the present appeal, are not of such character, that objection is overcome by the doctrine laid down by the Supreme Court in various judgments and particularly in those of July 22 and September 30, 1875, October 6, 1876, and June 2, 1877, holding that the question of jurisdiction has no place in an *ex parte* proceeding because the law gives jurisdiction to the court in which the proceeding is brought.

"It is considered that, although this jurisprudence was based on Rule 1 of article 1208 of the Law of Civil Procedure of 1855, which rule was not re-enacted in the new law, it must not be overlooked in the first place that when the Supreme Court established that juris-

prudence the Organic Act of 1870 was already in force and it contained nearly all of the rules of jurisdiction which figure in article 63 of the present code; furthermore, that in giving preferred jurisdiction of actions of all kinds to the judge to whom the interested parties may have submitted, article 56 of the present code establishes a general rule applicable also to the acts now under consideration and leaves the jurisprudence of the Supreme Court in force; and, finally, that it is the opinion of commentators of recognized authority that the rules of article 63 of the Law of Civil Procedure are applicable only to cases in which all the parties to a proceeding do not submit to a court other than that to which the said article refers."

This decision was followed by the General Directorate in its decision of May 8, 1889, upon the same point and to the same effect and both of these decisions and the comment of Manresa above quoted demonstrate that the Spanish law of submission was not affected by the omission of Article 1208 from the later enactment as claimed by respondents' counsel.

This being the state of the judicial interpretation and construction of these Spanish statutes by the Spanish courts and commentators, it is elemental in the law of statutory construction that these authorities govern also in Porto Rico, the jurisdiction of their re-enactment at least until expressly over-ruled or changed by legislation.

Counsel for respondents rely upon the amendment of Section 229 of the Civil Code in 1907 (Laws of 1907, p. 285) as having effected such a change in the law. In order that this section as so amended and in force at the time of the authorization in the

case at bar, may be compared with the same section as it read from 1902 to 1907, we here place them in parallel columns as follows:

As in force 1902 to 1907: *As in force 1907 to 1911:*

"Section 229. The father and the mother cannot alienate any real property belonging to their children, the usufruct of which they receive or for which they have the administration, nor can they burden the same except by mutual consent, and after securing the authorization of the District Court of their domicile."

"Sec. 229. The exercise of the *patria potestas* does not authorize the father or mother to alienate or burden real property which in any manner belongs to the child, and over which either of them have the administration, except after securing judicial authorization, which shall be accorded by the district court of the judicial district where said property is situated, upon proof being furnished as to the necessity or utility of such transfer or burden.
* * *

It is conceded that the new section of 1907 is longer and that there is considerable change of language but the important question, which counsel for the respondents ignores, is whether any of these changes show, or even tend to show, a legislative intent to take this section out of the doctrine of submission embodied in Sections 76 and 77 of the Code of Civil Procedure. The 1907 Act omits the cumulative requirement of mutual consent of the father and mother contained in the 1902 statute, and adds a few words to the effect that the applicant must prove either the necessity or the utility of the alienation, but this would in any

event be an implied incident of the proceeding and quite necessary for its orderly carrying out in a judicial manner. Neither change affects in any way the bearing of the doctrine of submission. The Circuit Court of Appeals practically based its reversal of the Supreme Court of Porto Rico on the single point of the effect of this amendment and we cannot better state our opponent's position than by quoting from the opinion of that Court (Rec. p. 165, 276 Fed. 105, 108) :

"It was within the undoubted power of the Legislative Assembly of Porto Rico to adopt or reject any of the provisions of the Spanish Civil Code in force at the time the American Civil Code was adopted in 1902; and if, in the exercise of a wise public policy, it provided in clear and unambiguous language that judicial authorization for the sale of land of minors could only be given by the court of the district in which the land is situated and where knowledge of its value could be most easily obtained and the interests of the minors most safely guarded, this cannot be over-ridden by judicial interpretation. We think not only that the language is clear, but, also, looking at the history of the Act and the amendments made to it, that it clearly expresses the legislative intent."

We give to this proposition our unqualified assent. The solicitude of the Court, however, as to the degree to which it felt that the Porto Rican legislature *ought* to have protected the rights of minors seems to have swayed its decision in finding what the legislature *had done*. We do not find, in the amendment of 1907 above set out, any "clear and unambiguous language" devoted to the purpose of removing Section 229 of the Civil Code from

the operation of the doctrine of submission. As already shown, that doctrine was fully known and established in the law as applying to *all ex parte* proceedings, at the time of the amendment of 1907, and it would have been easy for the legislature to have referred to it, in terms, or by reference to Sections 76 and 77 of the Code of Civil Procedure as then in force, but it did not do so. In fact, there is not a word in the amendment of 1907 (except as above pointed out and aside from verbal changes, additions and improvements usually to be found in all statutory re-enactments) which is not confined to the evident purpose of substituting the court of the situs in place of the court of the domicile as the forum for granting authorizations for the alienation of minors' properties. Granted the doctrine of submission (however foreign it may be to the American system of jurisprudence), there is just as much reason why it should sanction an application to the court of the domicile at a time when the substantive law mentions the court of the situs (as in the case at bar) as it should validate (as it was held to do in the cases we have cited) the same application to the court of the situs at the earlier date when the substantive law specified the court of the domicile.

The provisions cited by the Circuit Court of Appeals (Rec. p. 165, 276 Fed. 107) as to a possible sale of the minors' property at public auction, following the authorization of the alienation, are to be found *only* in the law of 1911 (Laws of 1911, pp. 118, 120) amending Section 82 of the Act relative to Special Legal Proceedings of March 9, 1905. It is to be noted that until the amendment of 1911 this Section of the Act of 1905 was not amended in connection with the substitution in 1907 of the court

of the situs in place of the court of the domicile, and since the authorization in the case at bar was obtained in 1908, the arguments based by the Circuit Court of Appeals on enactments which originated in 1911 must, of course, fall to the ground. Nor, even if these provisions had been in force in 1908, does there appear to be any reason why they could not have been complied with in connection with an authorization granted by the court of the domicile under the law of submission. The same Title of the Code of Civil Procedure of 1904, containing Sections 76 and 77 as to submission and immediately following them contained also a Section 86 reading as follows:

“Section 86.—When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a district other than the district in which the real estate, or some portion of it, is situated, the secretary of such court must, after final judgment therein, certify under his seal of office, and transmit to the corresponding court of the district in which the real estate affected by the action is situated, a copy of the judgment. The secretary receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from court (naming the proper court).”

No point has been made at any stage of the proceedings that this statute was not complied with in the case at bar and there is considerable indirect evidence in the Record to show affirmatively that it was (Rec. pp. 51, 59, 62, 66, 135).

The same Act of March 14, 1907 (Laws of 1907, p. 285) which amended Section 229 of the Civil Code, also made of Section 284 of that Code (pre-

viously referring only to authorization of arbitrations) virtually a new section, reading as follows:

“Section 284.—*The judicial authorization to alienate, exchange or encumber real property belonging to a minor or incapacitated person, or to compromise or arbitrate private or judicial questions, which affect the rights of the minor or incapacitated person, shall be accorded the guardian, by the District Court of the Judicial District where the property is situated, or before which the judicial issue is being tried, after proof has been furnished of the necessity or utility thereof.*”

PART III.

Argument.

The petitioners contend that the Circuit Court of Appeals in reversing the judgment of the Supreme Court of Porto Rico erred:

1. In holding as a matter of Porto Rican law that the order of the District Court of San Juan authorizing the sale of the property of the respondents was null and void for lack of jurisdiction;

2. In failing to apply the rule established by repeated decisions in this honorable court that a contract made on the faith of judicial interpretations of a statute cannot be impaired by a subsequent reversal of the decisions establishing such interpretations;

3. In failing to apply the rule established by repeated decisions of this honorable court that a local rule of property established and followed by the Supreme Court of Porto Rico should not be reversed except upon a clear showing that it has erred.

POINT I.

The Circuit Court of Appeals erred in holding that as a matter of Porto Rican law the order of the District Court of San Juan authorizing the sale of the property of the respondents was null and void for lack of jurisdiction.

The foregoing review of the statutes involved has indicated the statutes which were in force in Porto Rico at the time that the District Court of

San Juan authorized the sale in question, as well as their origin and interpretation by the Courts and commentators of Spain where they originated. It has been shown that under this construction in all matters of voluntary jurisdiction (*ex parte* matters) any court having jurisdiction of similar matters became competent to entertain the application for such an authorization by the voluntary submission of the applicant, even though a certain court was designated by another section of the Code of Civil Procedure or by a special statute. This Spanish interpretation of the effect of the Spanish law of submission upon the special provision of the substantive law requiring authorization for the alienation of the property of minors would be controlling in Porto Rico in the absence of provisions of statutes or decisions of the Courts to the contrary. We will now go further and show that the settled law of Porto Rico in 1908 was to identically the same effect.

As bearing particularly upon the question in this case it will be noted that the Spanish law of submission as propounded in the authorities discussed above, applies to all *ex parte* proceedings and is without any exception in favor of proceedings in which the rights of minors are involved. Indeed, in virtually all of the proceedings to which the rule has been applied there are considerations which, from the radically different point of view of American law, are equally as compelling against the application of the rule as the particular consideration of protecting the rights of minors from exploitation by their natural guardians. Manresa, in the passages quoted above, frankly discusses the Section of the Civil Code requiring authorization of the alienation of minors' property as one to which the articles of

the Law of Civil Procedure (including the articles on the law of submission) undoubtedly applies (*supra*), p. 14).

The first Porto Rico case to consider the operation of Sections 76 and 77 of the Code of Civil Procedure as to submission in *ex parte* proceedings was *Sola v. Registrar*, 8 P. R. R. 205, decided on March 25, 1905.

In this case the special provision referred to by the registrar was Section 75 of the Code of Civil Procedure itself (now more specifically covered by Section 19 of the Act relating to Special Legal Proceedings of March 9, 1905) which requires proceedings for the determination of any right or interest in real property to be tried in the district in which the "subject of the action" is situated. Relying on this section the registrar of Caguas in the district of Humacao refused to record as affecting real property in the district of Humacao where the intestate and the heirs were also domiciled, a declaration of heirs made by the district court of Guayama. The Supreme Court of Porto Rico reversed the registrar, holding:

"It is a general principle in matters of jurisdiction that a competent judge to take cognizance of suits, to which the maintenance of actions of all kinds may give rise, is the one to whom the litigants expressly or impliedly submit, provided that he has jurisdiction of matters of the same nature and in the same instance, and this principle, established in Section 56 of the former law of Civil Procedure, has been reproduced in Sections 76 and 77 of the new Code of Civil Procedure".

This decision furthermore was linked with the continuous line of Spanish authority cited in Part

II of this brief by the court's citation of precedents, as follows:

"In view of the legal provisions cited and the decision of the Director General of Registries of January 22, 1886, and May 9, 1889, the decision of the Registrar of Property of Caguas, which appears at the foot of the certificate in question, is hereby reversed."

The authorization in the case at bar was obtained on May 29, 1908, three years after the above decision, the question apparently not having arisen in any case in the meantime. Six months thereafter, however, on November 18, 1908, the same court decided the same question again in the same way in the case of *Santos v. Registrar*, 14 P. R. R. 741. This also involved a declaration of heirs by the District Court of Guayama although the intestate died domiciled in Humacao where the property was situated. The District Court of Guayama in its declaration disclosed that the parties in interest were five children and three grandchildren, and recited that the petitioner, one of the children, had expressly submitted to the jurisdiction of that court. The registrar in refusing to record this declaration in Humacao cited Section 19 of the Act relating to Special Proceedings of March 9, 1905, which specifically provides that such declarations shall be obtained from the court of the last domicile of the intestate or of the *situs* of the property. The Registrar in his opinion discussed the difficulty of determining in an *ex parte* matter whether all the parties had submitted to the jurisdiction and also pointed out that as a matter of fact in the case before him, the record expressly showed that only one of the five declared heirs had submitted to the Court. In this he completely mis-

understood the Spanish law of submission as explained above in Part II of this brief (see pp. 9-11), since in *ex parte* matters the only "parties" whose submission is required are the "parties" or "party" who actually makes the application.

In this case also there may well have been minors involved, since there were three grandchildren mentioned in the declaration.

The Supreme Court unanimously reversed the registrar, following *Sola v. Registrar, supra*. Three of the four judges sitting upon the case were also among the four judges who decided the case at bar in favor of petitioners. The headnote of the decision reads as follows:

"It is a well-established principle of the law governing jurisdiction that in all actions growing out of the maintenance of any suit, the court to which the litigants have expressly or tacitly submitted is competent to take cognizance of the suit, provided it has jurisdiction of the same class of business and in the same instance, and this principle is sanctioned by the provisions of sections 76 and 77 of the New Code of Civil Procedure."

The extent to which the law on this point was felt by the court to have become stabilized and established is indicated by what it says as to the question of holding the registrar culpable for his action in refusing to record the declaration, as follows:

"Although the refusal of the registrar of property might strictly be considered as an unwarranted denial in view of the previous decision of this court to which he makes reference in his decision, which has also been transcribed above, nevertheless, this court is unwilling to consider his act such in this matter,

and will decide all doubts in his favor in this case.

"In view of the provisions of the various laws aforecited, and of others which it is unnecessary to transcribe or cite in this case, the decision of the Registrar of Property * * * is reversed and set aside."

Since this case was decided after the authorization in question here had been already obtained, it would not be relevant if it had constituted any change or modification of the previous law on the subject. It is apparent, however, that it would not and could not have been decided any differently if it had been decided six months earlier on the eve of the obtaining of said authorization. Since it finds the law to have continued the same from the time of the decisions of the General Directorate cited in the case of *Sola v. Registrar* down through that case and past the time of the sale and authorization involved in the case at bar to the date of the decision six months later, it is very much in point.

In fact this Spanish and Porto Rican law dating back to 1875 (*supra*, p. 12) preserved an unbroken continuity unchanged and unchallenged until after the publication of the decision of this court in *Garzot v. Rubio*, 209 U. S. 283, 303.

In the interim between the decision in the case of *Santos v. Registrar*, *supra*, on November 18, 1908, and the decision of July 27, 1918 in *Martorell v. Ochoa*, 26 P. R. R. 625 (which was reversed by the Circuit Court of Appeals, 276 Fed. 99, simultaneously with the reversal in the case at bar), the Supreme Court of Porto Rico in the case of *Esteras v. Arroyo*, 16 P. R. R. 689, decided on November 10, 1910, reversed its former decision in the *Sola*

and Santos cases, *supra*, but without referring to them, relying upon a dictum in the opinion of this Court in the above case of *Garzot v. Rubio*. That case was cited as authority for the proposition that a court other than that of the domicile of the intestate could not make a declaration of heirs in view of Section 19 of the Law of Special Legal Proceedings. That same section, however, was involved in the case of *Santos v. Registrar*, *supra*, in which the court reached the opposite conclusion. In the whole line of precedent cited in the Part II of this brief, there is nothing to show that the law of submission applied only to adversary proceedings. Yet the court in *Esteras v. Arroyo* declared that the proceeding was "not an adversary proceeding and the party who brings it cannot choose his forum." The case arose in the District Court of Humacao upon a demurrer and answer to a complaint seeking to enjoin the use of a name and property rights by an illegitimate child of the deceased. His answer alleged that he had been declared the universal heir of his father by the District Court of Ponce. The Supreme Court of Porto Rico then proceeded to hold this answer insufficient because of want of jurisdiction of the Ponce Court for the reason already stated. But the court at the same time, ruling on the demurrer, held the complaint defective and decided in favor of the defendant. Only two of the judges who constituted the majority of the court in the case at bar took part in the above decision.

The words from the opinion of this court in *Garzot v. Rubio* which are relied upon in the case of *Esteras v. Arroyo*, *supra*, really constitute only a dictum and almost a dictum twice removed. This Court, in the first place, reversed the District Court

of the United States for Porto Rico because of the lack of necessary parties, but thereupon in considering whether to dismiss the action entirely or to remand it for further proceedings it considered the question of the jurisdiction of the Federal District Court. It found that the action sought to invoke a purely probate jurisdiction to settle three different estates two of which were already in orderly process of administration in the proper Porto Rican district court and to nullify an agreement for division of community interests involved in these estates. Although the court cites paragraph 5 of Article 62 (63) of the Spanish Law of Civil Procedure (now covered by Section 19 of the Law relating to Special Legal Proceedings of 1905) as vesting jurisdiction in the judge of the last domicile of the deceased and says "That the power thus conferred is exclusive is shown by the text of the same article", it says this with reference to the point decided which was that the Federal District Court in Porto Rico, as repeatedly decided in the case of Federal District Courts in this country, had no jurisdiction in equity over purely probate matters, particularly over a separate proceeding which was really ancillary to a probate proceeding already in progress in the State or Porto Rico court. In view of the prior pendency of the probate proceedings the decision of this court would have been the same even assuming that the Federal District Court in Porto Rico might have had jurisdiction of the whole proceeding if it had been brought in the Federal Court *ab initio*. In any event, there was only a question of jurisdiction as between a Federal Court and a state court and not as between two Porto Rican District Courts as in the case at bar so that the remarks of the Court were *obiter dicta* as

establishing an *exclusive* jurisdiction of the Court of domicile. This Court did not have presented to it the law of submission contained in Articles 56, 57 and 58 of the same Law of Civil Procedure, and elucidated in the wealth of precedent cited in Part II above; otherwise it would undoubtedly have held, as the Supreme Court of Porto Rico held in *Sola v. Registrar, supra*, and *Santos v. Registrar, supra*, and as the General Directorate of Spain held in its decision of January 22, 1886, all in similar proceedings, under the same statutes, that the jurisdiction of the court of the domicile was not exclusive.

After the decision in *Esteras v. Arroyo* on November 10, 1910, there seem to have been no decisions expressly affecting the doctrine of submission until the case at bar and two other cases arose practically simultaneously and were pending in the Porto Rico courts at the same time. *Agenjo v. Rosa* (Agenjo), 26 P. R. R. 648, 276 Fed. 105, was begun in the District Court of Humacao on May 27, 1913. *Gonzalez v. Benitez* (the case at bar), 27 P. R. R. 364, 276 Fed. 108, was begun in the District Court of Ponce on September 8, 1913, and two cases of *Martorell v. Ochoa*, 26 P. R. R. 625, 644, 276 Fed. 99, were begun in the District Court of San Juan on June 5, 1914. The case at bar was the second to be begun but the last to be decided in all courts.

The first decision in these three cases was by the District Judge of San Juan, sustaining a demurrer to the complaint in the two cases of *Martorell v. Ochoa, supra*. His opinion is not available, but from the report of the appeal from his decision to the Supreme Court of Porto Rico (23 P. R. R. 28, 32) it appears that he upheld the law of submission following and citing the Spanish decisions cited

above and expressly declined to follow the last previous decision of the Supreme Court of Porto Rico in *Esteras v. Arroyo, supra*, in its misunderstanding of the case of *Garzot v. Rubio, supra*.

This decision which, however, we submit was eminently correct and in accord with controlling precedent was reversed by the Supreme Court of Porto Rico in both cases (*Martorell v. Ochoa*, 23 P. R. R. 28, 41). The Supreme Court based its decision only and solely on the proposition that Articles 56, 57 and 58 of the Spanish Law of Procedure, stating the law of submission, were as to the alienation of the properties of minors, *repealed* by Section 164 of the Civil Code dealing substantively with that matter. It referred to the Spanish precedents cited in Part II of this brief only in distinguishing them as having been carried down in the alleged repeal (23 P. R. R. 39) completely ignoring the fact that Section 164 was in effect in Spain when these precedents arose and that the authorities (notably Manresa in the paragraph quoted above on page 14) had considered and decided that the law of submission was not limited or excluded by Section 164.

The *ratio decidendi* of the decision of the Circuit Court of Appeals in *Martorell v. Ochoa*, 276 Fed. 99, reversing the intermediate decisions of the Supreme Court of Porto Rico and returning to the conclusions of the above decision in 23 P. R. R. 28, 41, apparently also is practically the same as the decision in 23 P. R. R. 28, 41. (See 276 Fed. 100, 104.) Although both of these decisions are relied upon greatly by counsel for respondents, they are not in point in the case at bar because in Porto Rico the order of enactments was reversed and Section 229 of the Civil Code became law before and not

after Sections 76 and 77 of the Code of Civil Procedure. (See pages 6 to 8 above.)

A further and conclusive reason why the decision in *Martorell v. Ochoa*, 23 P. R. R. 28, 41, cannot be used in the manner and with the importance and emphasis given to it in argument and briefs by counsel for the respondents, is that it is only an interlocutory judgment on demurrer and not a final judgment and was expressly disowned, repudiated and overruled in the final judgment by the same court which rendered it (26 P. R. R. 625, 644). This repudiation likewise destroys as an authority respondents' citation of this case as holding that decisions of the General Directorate which we have cited (*supra*, pp. 12, 15) are not binding on the courts (23 P. R. R. 40). This overruled case is the only one to so hold so far as we can discover and the General Directorate decisions are cited and regarded in all of the other cases as authoritative expositions of Spanish law in the absence of Spanish Supreme Court decisions to the contrary.

This decision in *Martorell v. Ochoa*, *supra* (later overruled), was duplicated by the District Court of Humacao, in the case of *Aguijo v. Rosa*, *supra*, without referring, however, to the *Martorell v. Ochoa* decision, but citing *Esteras v. Arroyo*, *supra*. Thereupon, the District Court of San Juan in a trial upon the merits in *Martorell v. Ochoa*, remanded, held that the purchasers of the minors' property under the authorization apparently held to be void by the Supreme Court, had acquired title by prescription.

When the decision of the District Court in *Martorell v. Ochoa* on the question of prescription reached the Supreme Court (25 P. R. R. 707, 731), three of the Judges voted to affirm on this ground,

but their opinion indicated in the following passage a disposition to reconsider the decision in 23 P. R. R. 28, 41:

"It was common doctrine sustained by judgments of the Supreme Court of Spain of July 22 and September 30, 1875, October 6, 1876, and June 2, 1877, and by decisions of the General Directorate of Registries of January 22, 1886, and May 9, 1889, that both in cases of contentious and voluntary jurisdiction submission could be made to the judge exercising ordinary jurisdiction and having jurisdiction of matters of the same kind and in the same degree."

Furthermore, as indicated in the dissenting opinion of Judge Wolf (25 P. R. R. 731) the majority position was that "previous to 1905 and the decision in *Esteras v. Arroyo*, 16 P. R. R. 689, there was a general understanding that any district court might give authority" and that this constituted a "rule of property". Judge Wolf's mention of the date 1905 must have been meant for 1910 as *Esteras v. Arroyo* was not decided until November 10, 1910 after the date of the authorization in the case at bar.

One of the judges concurring in the majority opinion thereupon filed a further concurring opinion (25 P. R. R. 721-730) pointing out in detail why the decision in *Garzot v. Rubio*, *supra*, was not in point and also pointing out that the decision in 23 P. R. R. 28 was rendered in haste, during disposal of a crowded calendar and without "due consideration on its merits" and vigorously contending for a reconsideration of the decision so that if wrong, it might be "revised and corrected".

In this opinion, Judge Hutchinson says:

"The case of *Esteras v. Arroyo*, without so much as assigning a reason beyond a bare reference to sections 19 and 23 of the Law of

Special Legal Proceedings and to the case of *Garzot v. Rubio*, *supra*, absolutely overrules the doctrine of *Sola v. Registrar of Property*, 8 P. R. R. 205, which for more than five years stood unchallenged as the solemn judgment of this court.

"The case last mentioned is deep-rooted in the fertile soil of Spanish jurisprudence, and the statutory provisions upon which the opinion therein is based are as firmly embedded in our present Code of Civil Procedure, Title V—'Of the Place of Trial of Civil Actions'—as they ever were in the Spanish code. The legislature is presumed to have known the law and the status thereof, at the time it enacted sections 76 and 77 of the present code, and in taking them from the Spanish Code of Civil Procedure it adopted with them the established practice sanctioned by the interpretation of the former law of the Spanish courts.

"That in this particular instance the Legislative Assembly understood the matter it had in hand is self-evident. For unless the Spanish practice under these sections is brought with them into the new code, they add nothing to the other sections of the same title copied from the Idaho code, and in so including them our law-makers did a vain and useless thing. And we have no reason to assume that the grouping of these two sections with other appropriate provisions governing the place of trial was a mere fortuitous circumstance. On the contrary, and aside from any presumption of law, it was plainly the most natural, proper and logical thing to do. Translated as near as may be into terms of American law, the principle involved is not a matter of jurisdiction in its ordinary sense, but of modern municipal venue. *Bayron v. Garcia*, 17 P. R. R. 512; *Gomez v. Toro*, 23 P. R. R. 596; 40 Cyc. pp. 23-43."

He further said after hypothetically assuming for the sake of argument, but not conceding, that the case of *Garzot v. Rubio* could have the effect

claimed by respondents, that the situation would be as follows:

"Certainly in no other instance has the opinion of this court construing any local law been brushed aside and held for naught with so little ceremony. At the time of that decision there was no local rule of real property more firmly fixed, not only by the Insular courts, but also by those of last resort in Spain, than that arising out of the privilege in *ex parte* matters of selecting the most convenient court of competent jurisdiction. No one in this island, lawyer or layman, doubted the existence of such a right, which rested upon the uniform interpretation for many years of articles 56 and 57 of the former Code of Civil Procedure, in connection with the saving clause contained in the opening paragraph of article 63. To hold in the face of that express qualification of the general rule, that subdivision 5 of the article last mentioned confers upon the court of the last place of residence of the deceased a jurisdiction exclusive of all power to act in any other Insular district court to which the parties interested may have applied, would be to destroy hundreds, perhaps thousands, of recorded titles considered flawless by all parties concerned in giving them legal sanction when the stamp of judicial approval was sought, including attorneys, courts, and registrars of property, whose duty it was, each in turn and with independent judgment, to pass upon the same."

Upon reconsideration two of the four judges voted to affirm the decision against the plaintiffs on the grounds of prescription but both of them and the other two judges (making a majority of four out of the five judges who concurred together in this decision on reargument and reconsideration in this case of *Martorell v. Ochoa*, in the decision

in *Agenjo v. Rosa*, 26 P. R. R. 648, and in the case at bar, *Gonzalez v. Benitez*, 27 P. R. R. 364) also courageously overruled and repudiated the decision in 23 P. R. R. 28, 41. They stated their reasons as follows:

"In the search which we have made we have not found a single case in which the question of the nullity of an authorization granted by a judge not of the domicile of the minor has been raised and decided by the Supreme Court; but the lack of specific jurisprudence on this point inclines us to think that that question has not been raised because it is the general and uniform belief, both in Spain and its possessions, that such authorization granted by any judge of ordinary jurisdiction is valid.

"In the case under consideration neither the attorney who advised Rosa Torrens and drew up the petition for the authorization of the court to sell the property of her minor children, nor the three judges who heard the said petition, nor the *fiscal* who made a favorable report upon it, nor the notary who drew up the deed of sale, nor the registrar who had to record the title of ownership, entertained the slightest doubt as to the validity of the proceeding; and, furthermore, the plaintiffs themselves have indifferently allowed the years between 1904 and 1914 to pass without asserting the right to which they believe themselves entitled and without giving any reasons which would justify their delay in the exercise of that right, as though they themselves were convinced of the validity of the authorization because it was granted by a court having jurisdiction.

"It may be that the decision of the Supreme Court of the United States in the case of *Garzot v. Rubio*, 209 U. S. 303, and our decision in the case of *Esteras v. Arroyo*, 16 P. R. R. 689, have been instrumental in arousing them; but if the cases in which these decisions

were rendered are examined carefully, it must be concluded that they are not applicable to the present case."

Of their former decision on demurrer in 23 P. R. R. 28, which is so greatly relied upon by respondents, these Judges say:

"It is true that this present opinion is not in harmony with the opinion delivered in this case on July 23, 1915, (23 P. R. R. 28) in which we held that the demurrer to the complaint by the defendants on the ground that it did not constitute a cause of action, should be overruled because we considered that the authorization granted to Rosa Torrens by the order of April 28, 1902, was null and void; but the traditional law of the case can never justify a deliberate sacrifice of the essential principles of justice and prevent the correction of the error committed. That decision was not a final judgment. *Great Western Tel. Co. v. Burnham*, 162 U. S. 339."

At the same time the Supreme Court of Porto Rico also decided the case of *Agénjo v. Rosa*, 26 P. R. R. 648 (July 27, 1918), in which they reached the same conclusion as in *Martorell v. Ochoa*; although not the Spanish statutes, as in that case, but the Porto Rican Statutes, viz. Section 229 of the Civil Code and Sections 76 and 77 of the Code of Civil Procedure, were involved.

The Court says:

"According to the laws of Spain, which govern the present case, jurisdiction, as defined by the distinguished commentator Manresa y Navarro in his Commentaries on the Spanish Code of Civil Procedure, is the authority with which the judges are invested to administer justice, and competency is the authority which they have to take cognizance of cer-

tain matters, either on account of the very nature of the thing involved or by reason of the persons. The former is the genus and the latter the species. Jurisdiction always emanates directly and immediately from the law. No one can exercise it unless the law has given him that authority. Only the persons who have been given such authority according to law have jurisdiction and can administer justice; but the competency of a judge to take cognizance of a matter, although derived also from the law, sometimes originates directly, immediately and exclusively from the law and at other times from the will of the parties. The former case is the general rule and the latter the exception. *Garces v. Franceschi*, 1 S. P. R. 282; *Bayron et al. v. Garcia et al.*, 17 P. R. R. 512.

All of the district courts of Porto Rico have jurisdiction to grant authority for the alienation of property belonging to minors, albeit, according to said section 229, only the district court of the district wherein the property is situated has territorial jurisdiction for that purpose, but such territorial jurisdiction, which by its nature is adjective or procedural in character, is conferred upon them by said sections 76 and 77 of the Code of Civil Procedure when there is submission."

"And the old construction which the Supreme Court of Spain established in its judgments of July 22 and September 30, 1875, October 6, 1876, and June 2, 1877, is that in matters of *ex parte* jurisdiction the question of territorial jurisdiction is not considered because the law confers this upon the court in which the petition is filed. This doctrine was followed by the General Directorate of Registries of Spain in its decisions of January 22, 1886, May 9, 1889, and February 8, 1907, as well as by this court on March 25, 1905, in the administrative appeal of *Sola v. Registrar of Property of Caguas*, 8 P. R. R. 205. Those

judgments and decisions establish as a general rule, without stating exceptions, that in matters of *ex parte* jurisdiction the law gives territorial jurisdiction to the judge to whom application is made, and as authorization to alienate property of minors is considered in *ex parte* jurisdiction, the foregoing doctrine is also applicable to such authorization."

The opinion of the Supreme Court of Porto Rico in the case at bar (Rec. p. 152, 27 P. R. R. 364) is wholly based on the above opinions in *Martorell v. Ochoa* and *Agenjo v. Rosa*.

By its final decisions in the cases of *Martorell v. Ochoa* (26 P. R. R. 625, 644), *Agenjo v. Rosa*, *supra*, and in the case at bar, the Supreme Court of Porto Rico has now reversed its decision in *Esteras v. Arroyo*, *supra*, and its earlier decisions in the two cases of *Martorell v. Ochoa*, *supra*, and has reverted to its original holding on this point, and it is submitted that this holding is correct. Four of the five Justices of the Court, after most mature and careful consideration, decided that the decision in *Garzot v. Rubio*, *supra*, was not applicable to the case at bar and that the District Court of San Juan, although not the court of the District in which the property was located, under Section 229 of the Civil Code, as amended in 1907, became the court of competent jurisdiction by submission of the parties under Sections 76 and 77 of the Code of Civil Procedure.

The only authorities which counsel for respondents could possibly cite against the foregoing, aside from the overruled case of *Esteras v. Arroyo*, *supra*, and the case of *Garzot v. Rubio*, *supra*, which has been distinguished, are the cases of *Nazario v. Registrar*, 16 P. R. R. 635 (Oct. 18, 1910), decided only a month before *Esteras v. Arroyo*, *supra*, and not referred to therein, and *Baerga v. Registrar*,

29 P. R. R. 440 (May 20, 1921). In the latter recent case the same court which decided the case at bar cites and follows *Nazario v. Registrar*, and distinguishes that case both from the overruled case of *Esteras v. Arroyo* and from the decisions of the court in *Martorell v. Ochoa*, *supra*, *Agenjo v. Rosa*, *supra*, and the case at bar. This decision of the Supreme Court of Porto Rico that the law of submission, which in the foregoing decisions it has declared and applied to proceedings for the alienation of minors' properties, is not applicable to proceedings to declare a dominion title in real estate is a part of the local Porto Rican law on the subject and should not any more than any other part of that law be upset by this court at this date and in derogation of petitioners' property rights acquired in 1908 under the principles to be discussed in Point II and Point III below.

The cases of *Nazario v. Registrar* and *Baerga v. Registrar* both relate to proceedings for the declaration of a dominion land title and in the former the court states a particular reason why such a proceeding should be held only in the district of the situs of the land which does not apply to cases for the alienation of minors' property as follows:

"Such proceedings are not like those in which the parties may confer jurisdiction upon a court of justice * * * It is in the district where the property is situated and where it is natural that the parties who may have opposing interests to those of the petitioner reside, that proceedings of this character should be had, in the open, with the greatest publicity possible under the law."

It is true that counsel for respondents in argument and in their various briefs and the Circuit Court of Appeals in its opinion (Rec. p. 165) have argued that it is particularly necessary that pro-

ceedings for alienation of minors' properties should also be brought in the district of the situs, where the value of the land could be ascertained. Contrariwise, it might be thought at least equally or even more important that the proceedings should be in the court of the domicile where the parties would be known, where the guardian would be accountable and where the estate itself would be in probate, so that the condition of the estate financially and otherwise and the necessity and utility of the alienation for the purpose of payment of debts or otherwise could be more easily known. In fact, at the time of the authorization in this case and up to 1911, the only detailed requirement applying to such proceedings was that such "necessity or utility" should be proved. The importance of the court of the domicile in this matter is proved by the fact that in both Spain and Porto Rico up to 1907 the Civil Code provided that these proceedings should be had in the court of the domicile and they were in the case at bar brought in such court. A further reason for distinguishing these cases of *Nazario v. Registrar* and *Baerga v. Registrar*, which is not mentioned by the court in either case, is that not only is there a special provision in the substantive law (in these cases Section 395 of the Mortgage Law, corresponding to Section 229 of the Civil Code in the cases relating to alienation of minors' property) but there is also a section to the same effect in the Code of Civil Procedure itself immediately preceding the sections on submission reading as follows:

"Section 75.—Actions for the following causes must be tried in the district in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this Code:

"1. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property."

It might well be thought that the procedural doctrine of submission would not override these provisions of the procedural law itself enacted simultaneously with and in such close juxtaposition to them to the same extent as it would affect separate and distinct provisions of separate statutes of substantive law.

POINT II.

The Circuit Court of Appeals should have sustained the decision of the Supreme Court of Porto Rico on the further ground that the petitioners in relying upon the authorization granted by the District Court of San Juan contracted rights upon the faith of the established judicial interpretations of the statutes in force, which cannot be impaired retroactively.

Contracts entered into on the faith of judicial interpretations of a statute which had not then been overruled cannot be impaired by a later change of such interpretations.

Gelpcke v. Dubuque, 1 Wallace, 175;

Muhlker v. Harlem Ry. Co., 197 U. S. 544.

In its opinion in *Douglass v. County of Pike*, 101 U. S. 677, 687 (1879), which has been recently cited

and followed in *Thornton v. Duffy*, 254 U. S. 361, 368 (1920), this Court said:

"The true rule is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retroactive. After statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is to all intents and purposes the same in its effect on contracts as an amendment of the law by means of a legislative enactment."

At the time of the authorization and sale here in question, the most recent authority was the unanimous decision of the Supreme Court of Porto Rico in *Sola v. Registrar*, 8 P. R. R. 205 (March 25, 1905), which declared the law of submission in *ex parte* matters to be established as "a general principle in matters of jurisdiction" (*supra*, p. 25).

The Judge of the District Court, in the case at bar virtually conceded that this was the law in 1908 although he decided the case against petitioner Benitez on the authority of *Esteras v. Arroyo*, *supra* and the first decision in *Martorell v. Ochoa*, *supra*, saying in his opinion (Rec. p. 26):

"If Benitez and his wife had been able to study the jurisprudence of the Supreme Court of Porto Rico in the case of *Sola v. The Registrar*, *supra*, and the commentaries of Manresa on article 164 of the Spanish Civil Code, volume 2, pp. 44-45, they necessarily would have arrived at the conclusion that the said authorization was valid. The most competent lawyer in Porto Rico would also have arrived at the same conclusion. If defendant Benitez and his wife had been able to study for themselves

the jurisprudence laid down by the Supreme Court of Porto Rico in the judgment of November 18, 1908, or five months after they had acquired the properties involved in this suit (*Santos v. The Registrar, supra*) they would have concluded also that the authorization granted by the District Court of San Juan was perfectly valid. Undoubtedly no other conclusion would have been reached by the most expert lawyer in Porto Rico after studying the case, if he had been consulted by the defendants."

Irrespective of whether the judicial interpretation in reliance upon which petitioners' rights in the property in question were acquired is considered as an interpretation of the procedural law of submission contained in Sections 76 and 77 of the Code of Civil Procedure or as an interpretation of the substantive law as to alienation of the property of minors contained in Section 229 of the Civil Code, the result is the same. That an established statutory interpretation existed has been proved in the discussion of the statutes in Part II of this brief and in Point I *supra*, and that judicial interpretation may be considered as attaching itself either to the law of submission or to the law of alienations or both. In any event, it became a rule of property when it entered into petitioner Benitez's title for which he gave value and upon which he proceeded to erect a leasehold interest and a mortgage interest in favor of third parties. If the Circuit Court of Appeals felt that this local interpretation of the local statutes was wrong, it at most should have said so in a dictum, leaving decision of the question for a case where the change of law would not have a retroactive effect on property rights but it should not have reconsidered and reversed the rule in derogation of petitioners' rights acquired on the faith of the previous interpretation.

POINT III.

Finally the Circuit Court of Appeals should have sustained the judgment of the Supreme Court of Porto Rico on the ground that a local rule of property established and followed by the Supreme Court of Porto Rico should not be reversed except upon the clear showing that it was error.

The question of the competency of the District Court of San Juan to authorize the sale in question being one of purely local law based on an interpretation of a local statute by the courts of Spain and of Porto Rico, the decision of the Supreme Court of Porto Rico sustaining the validity of a sale based upon an authorization granted by the District Court of San Juan, should have been followed unless it were very clearly shown that error has been committed.

Elzaburu v. Chavez, 239 U. S. 283, 292;
Cardona v. Quiñones, 240 U. S. 83-84;
De Villanueva v. Villanueva, 239 U. S. 293, 299;
Estate v. Brown, 235 U. S. 342, 349;
Nadal v. May, 233 U. S. 447, 454.

The Federal courts will lean toward an agreement of views with the State courts if the question seems to them balanced with doubt.

Douglas v. Kentucky, 168 U. S. 488, 502;
Burgess v. Seligman, 107 U. S. 30, 34.

It has not been "clearly shown" that the interpretation of the local statutes by the Supreme Court of Porto Rico was erroneous. Quite to the contrary, the authorities cited in Point I (*supra*) clearly show that this interpretation is in accord with the previous decisions of the courts of Spain and of Porto Rico.

As it must be assumed that the Circuit Court of Appeals did not agree with us as to the correctness of this interpretation, the most serious error that it committed, as we see it, was in attempting to reopen and decide the question on the merits and in the light of American legal standards, as if it were a case of first impression.

At the very least the citation and argument contained in Point I, *supra*, must have shown that the conclusion reached by the Circuit Court of Appeals was very far indeed from being free from doubt. This being so, it was its duty under the decisions just cited to affirm the local courts. As was said by this court in *De Villanueva v. Villanueva*, *supra* (239 U. S. 293, 298), as to the assignments of error relied on in that case:

"in so far as they challenge the correctness of the application which the courts made of the local law to the facts in deciding the cause, they are totally deficient in that persuasive strength which it is essential they should possess in order to produce the conviction that clear error was committed by the court below, and thus lead us to depart from the principle by which we follow and sustain the local law as applied by the court below unless we are constrained to the contrary by a sense of clear error committed. *Ker v. Couden*, 223 U. S. 268, 279; *Santa Fe Ry. v. Friday*, 232 U. S. 694, 700; *Nadal v. May*, 233 U. S. 447."

Under the provisions of law in force, at the time the District Court of San Juan authorized the sale of respondents' interests and at the time the deed thereunder was executed, it was a firmly fixed rule of real property, established by the Supreme Court of Porto Rico, construing the codes then in force, that, in *ex parte* matters the parties had the privilege of selecting the most convenient court having jurisdiction of the same subject matter, and that such court became competent to hear and decide the matter by the submission of the parties. Petitioners acquired title to the property in question, relying upon this rule of property which was thereafter reaffirmed and again reaffirmed by the Supreme Court of Porto Rico.

In *Elzaburu v. Chavez*, 239 U. S. 283, decided in 1915, the question was substantially the same as in the case at bar, viz.: the effect of certain provisions of the Code of Civil Procedure of 1904 and the Law of Evidence and Act relating to Special Legal Proceedings of 1905 upon certain substantive provisions of the Mortgage Law, and the judicial interpretation thereof as to the extent to which certain decisions as to title to real estate were *res judicata*. This court considered two decisions of the Supreme Court of Porto Rico of 1906 and one of 1908 (which therefore had been in effect at the time of the decision of that case a much shorter period than had the decisions of 1905 and 1908 as affecting the case at bar), and said:

“* * * since it is plain that the decisions, having stood so long unchallenged, have established a rule of property, it seems to us that they ought not now to be overruled.”

CONCLUSION.

The judgment of the Circuit Court of Appeals reversing the judgment of the Supreme Court of Porto Rico should be reversed and the judgment of the Supreme Court dismissing the complaint affirmed, with costs to the petitioners in all courts.

January 30, 1923.

Respectfully submitted,

CURTIS, MALLET-PREVOST & COLT,
Attorneys for Petitioners,
30 Broad Street,
New York City.

JOSÉ R. F. SAVAGE,
CORNELIUS C. WEBSTER,
Of Counsel

Office Supreme Court U. S.
WILLIAM

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WM. R. STANSBURY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1921.

No. **263**

JOSE J. BENITEZ DIAZ in his own right and as father
with PATRIA POTESTAS over his minor unmanicipated
children CARLOTA, JOSEFA and JOSE BENITEZ
SAMPAYO and DIEGO GARCIA ORTEGA,

Petitioners,

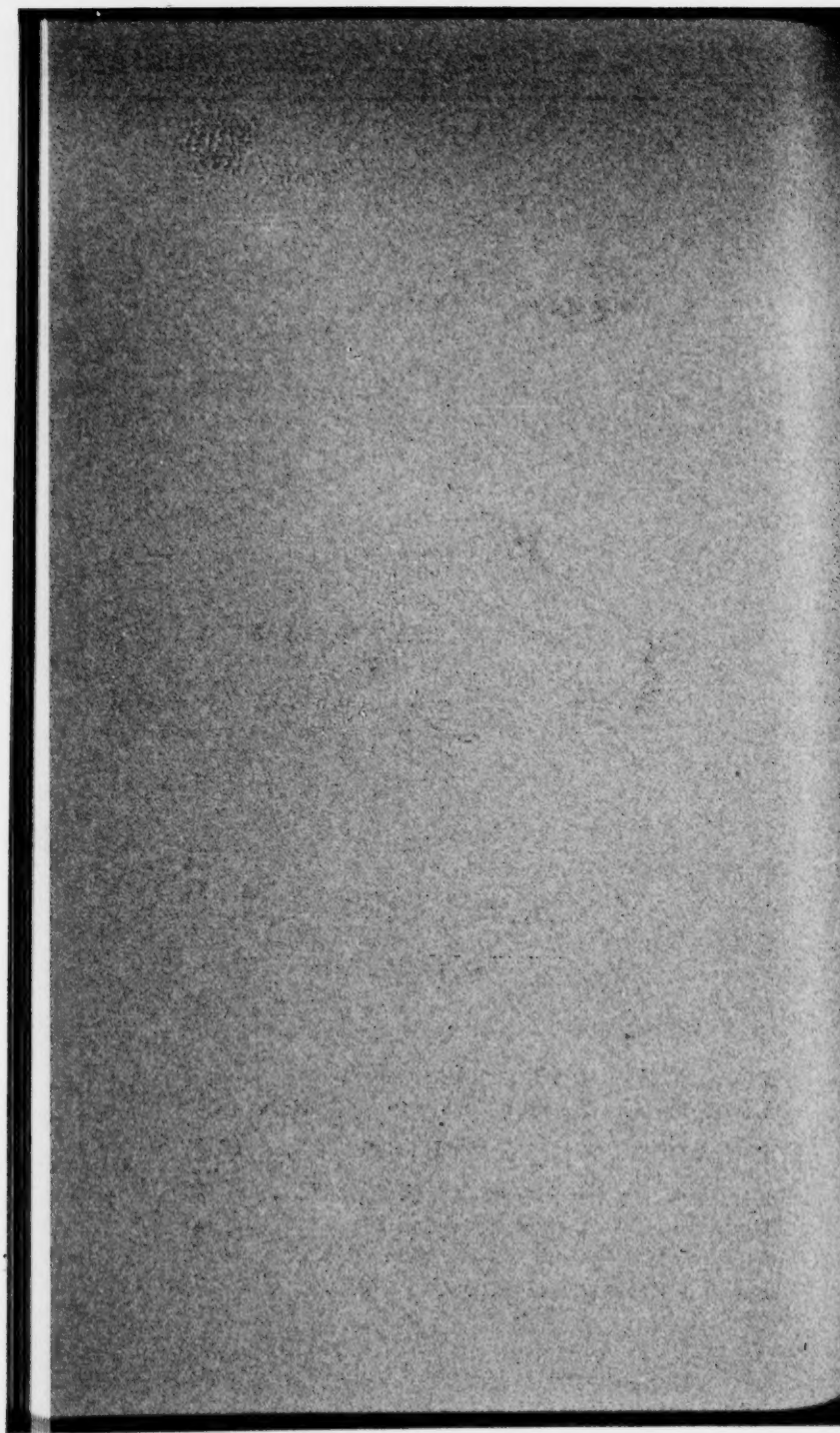
vs.

CARLOTA and CLEMENTINA GONZALEZ Y LUGO, rep-
resented by their guardian ad litem, ARTURO APONTE,
Jr., and MANUEL GONZALEZ Y LUGO,

Respondents.

**MEMORANDUM BRIEF FOR RESPONDENTS
TO DISMISS THE WRIT OF CERTIORARI.**

GEORGE B. HAYES,
FRANK ANTONSANTI,
Solicitors for Respondents,
No. 42 Broadway,
Borough of Manhattan,
New York, N. Y.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1921.

JOSE J. BENITEZ DIAZ in his own
right and as father with PATRIA
POTESTAS over his minor un-
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JOSEFA and JOSE BENITEZ SAM-
PAYO and DIEGO GARCIA
ORTEGA,

Petitioners,

vs.

CARLOTA and CLEMENTINA GON-
ZALEZ Y LUGO, represented by
their Guardian *ad litem*, AR-
TURO APONTE, JR., and MANUEL
GONZALEZ Y LUGO,

Respondents.

Petition for
Certiorari.
No. 728.

**MEMORANDUM BRIEF FOR
RESPONDENTS.**

The facts in this case briefly stated are as follows:

The respondents herein, Carlota and Clementina Gonzalez y Lugo, by their guardian *ad litem*, Arturo Aponte, Jr., and Manuel Gonzalez y Lugo, plain-

tiffs below, brought this action in the District Court for the Judicial District of Ponce, Porto Rico, against Jose J. Benitez Diaz, in his own right and in representation of his minor children, to recover certain interests claimed by them in real estate situated within the Judicial District of Humacao, Porto Rico, together with the rents and profits thereof, on the ground that the sale of these interests by the mother, as their guardian, to the petitioner by virtue of a deed dated the 5th day of June, 1908, under authority granted by the District Court for the Judicial District of San Juan on the 27th day of May, 1908, was null and void for the reason that the District Court for the Judicial District of San Juan did not have jurisdiction to decree the sale, alleging that the only Court having jurisdiction to authorize such sale was the District Court for the Judicial District of Humacao, Porto Rico, in whose jurisdiction the property sold was situated.

The said District Court for the Judicial District of Ponce, Porto Rico, declared that the decree of the District Court for the Judicial District of San Juan, granting authority to sell the property, as hereinbefore stated, in so far as it referred to the interests of the three plaintiffs in the said property who were minors, was null, void and of no effect whatsoever, on the ground that the Court for the Judicial District of San Juan had no jurisdiction to enter its decree.

The petitioners herein, the defendant below, appealed from the said judgment of the District Court for the Judicial District of Ponce, Porto Rico, to the Supreme Court of Porto Rico, which last-mentioned Court, by a vote of four to one, re-

versed the judgment of the said District Court for the Judicial District of Ponce, and directed that the complaint be dismissed, the Supreme Court of Porto Rico holding in substance that the parties to the application having submitted themselves that Court acquired jurisdiction.

Thereafter the respondents herein, plaintiffs below, appealed from the decision of the Supreme Court of Porto Rico to the United States Circuit Court of Appeals for the First Circuit, assigning, as error, the following, to wit:

"The Supreme Court of Porto Rico erred in holding that the District Court of San Juan was empowered and had jurisdiction to authorize Clementina Lugo Calzada as the mother of her minor children, plaintiffs herein, to sell the real property herein involved and which is situated within the Judicial District of Humacao, and likewise in holding that said sale so made was valid and in full force and effect, notwithstanding that such authorization was given by a Court which was not a Court within the territorial district in which the said property herein involved was situated."

The case came on regularly before the United States Circuit Court of Appeals for the First Circuit and was fully argued by respective counsel and briefs were filed upon the questions of law, which both parties considered material, and on November 1, 1921, the said Circuit Court of Appeals rendered its opinion, to the effect that the only Court of competent jurisdiction to authorize the sale of property belonging to minors was the Court for the Judicial District in which the property was situated, and that the parties to *ex parte* proceed-

ings in such cases could not submit themselves to the jurisdiction of the Court of any other District.

Under the above concise statement of the case, it is our contention that the decision of the United States Circuit Court of Appeals for the First Circuit was well founded, as the same faithfully interprets the law of Porto Rico on the subject.

Replying to the argument of the petitioners herein, to the effect that it was stated in the opinion of Judge Hutchinson, one of the Associate Justices of the Supreme Court of Porto Rico, that hundreds and perhaps thousands of recorded titles of real property in Porto Rico will be invalidated if the judgment of the United States Circuit Court of Appeals herein is allowed to stand unchallenged, we desire to state that only two other cases have arisen in Porto Rico involving similar questions, as in the instant case, to wit:

Martorell v. Ochoa, 26 P. R. R., 625.

Ajenjo v. Rosa, 26 P. R. R., 648.

In the above cases the identical question was involved as in the instant case and decided in the same manner as above stated by the United States Circuit Court of Appeals for the First Circuit and which cases have been brought before this Court upon writs of certiorari and are to be submitted together with the present case.

Assuming for the sake of argument that the rule in Porto Rico, as laid down by the Supreme Court of that island prior to the decision of the Supreme Court of the United States in the case of *Garzot v. Rubio*, 309 U. S., 303 (which we do not admit), was to the effect that parties could submit to any Court in matters similar to the one at bar, the

fact remains that since the rendering of the opinion in the *Garzot v. Rubio* case, some fourteen years ago, the two cases cited above and the instant case are absolutely the only cases involving the question that has been presented, and it certainly would be reasonable to assume that if there had been any further analogous cases they would have been submitted to the Courts ere this, especially so since the year 1915, when the Supreme Court of Porto Rico decided unequivocally that the sale of property belonging to minors was null and void unless the Court authorizing the sale was one of competent jurisdiction, and, therefore, we fail to find any logic in the statement cited by petitioners as having been made by Judge Hutchinson.

History, Legislation and Precedents.

This question, since it affects minors in whose welfare the State is concerned, is of great importance, inasmuch as it embraces a question of public policy. Minors have always been the object of special legislation and the State, as well as the Courts, have never ceased to watch over their interests. If this were otherwise society would not rest on a solid foundation and nations would fail to accomplish their mission of civilization in the world.

First, we should ascertain what was the jurisprudence controlling the matter in Porto Rico, when the action was brought. In other words, what sources of investigation were opened for the purpose of arriving at a definite conclusion?

At the time of the sale of the real property belonging to these respondents, that is to say, in 1908, the revised Civil Code was in force and effect

in Porto Rico, Section 299 thereof being amended in 1907 (Acts and Resolutions of 1907, p. 285).

Going back to the time of Spanish sovereignty and up to and including the present, two Civil Codes have been in force in Porto Rico. The first went into effect on January 1, 1890, and was operative until June 30, 1902. The second became effective on July 1, 1902, and is still in force at this time.

When the first above-mentioned Code was in effect in Porto Rico, the Spanish Code of Civil Procedure was also in effect.

Martorell v. Ochoa, 23 P. R. R., 28.

The Spanish Code of Civil Procedure, in so far as it relates to the question in this case, provided as follows:

"Article 56: Any Judge impliedly or expressly, agreed upon by the litigants, shall be competent to take cognizance of the suits arising from actions of all kinds."

"This submission, however, can only be made to a Judge exercising ordinary jurisdiction and who is competent to take cognizance of questions similar to and of the same kind as the one submitted."

"Article 58: An implied submission is made:

First: By the plaintiff, by the act of filing his complaint before the Judge.

Second: By the defendant, when after his appearance is entered in the action he takes any further steps therein except to formally object to the jurisdiction of the Judge by declinature."

"Article 63: In order to determine competency, in cases other than those mentioned in the foregoing Articles, the following rules shall apply:"

"Subdivision 23. In authorizations for the sale of property of minors or incapacitated persons, a competent Judge shall be that of the place where the property may be situated, or that of the domicile of the persons to whom it belongs."

When the Civil Code went into effect in the year 1890, Section 164 thereof read as follows:

"Section 164: The father or the mother in the proper case, cannot alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity and after authorization from the Judge of the domicile hearing the Department of Public Prosecution excepting the provisions, which, with regard to the effects of transfers, the Mortgage Law establishes."

It is not our purpose to discuss at this time whether this section was repugnant to Subdivision 23 of Article 63 of the Law of Civil Procedure then in force.

Article 71 of the Law of Civil Procedure makes express reservation in regard to special laws, as will be seen by the following:

"Article 71: The rules established in the foregoing Articles shall be understood without prejudice to the provisions of law in special cases."

However, inasmuch as Section 164 of the Civil Code contains a special substantive provision as in

that relating to the matter of the sale of property belonging to minors, there is no doubt that the Civil Code should prevail over that of the Code of Civil Procedure.

What we will say, however, is that whether viewed from the standpoint of the Spanish Law of Civil Procedure (Article 63, Subdiv. 23), or from the standpoint of Section 164 of the Spanish Civil Code, there can be but one conclusion; namely, that if the theory of submission were allowed to prevail the provisions set forth in Subdivision 23 of Article 63 of the Spanish Law of Civil Procedure, which immediately follows the articles referring to such submission, would be superfluous.

If our contention is not sound, Subdivision 23, cited above, would serve no purpose and result in an absurdity.

The foregoing, we believe, states absolutely what the law was in Porto Rico during the Spanish sovereignty and under that law not a single case can be cited as having been decided by the Supreme Court of Spain or by the former Supreme Court of Porto Rico (Audiencia Territorial), holding that the theory of submission could be applied in *ex parte* proceedings petitioning for the authorization of the sale of property belonging to minors, for we can assure the Court that there is no jurisprudence whatsoever to substantiate the theory advanced by the petitioners.

Coming now to the jurisprudence in force in Porto Rico after the ceasing of Spanish sovereignty in 1898, a new Civil Code was enacted in 1902 and Section 229 thereof read as follows:

“The father and the mother cannot alienate any real property belonging to their children the usufruct of which they receive or

for which they have the administration, nor can they burden the same except by mutual consent and after securing the authorization of the District Court of their domicile."

This article was amended in 1907, which amendment will be found in the Acts and Resolutions of the Legislature of Porto Rico of that year at page 285, as follows:

"The exercise of Patria Potestas does not authorize the father or mother to alienate or burden real property which in any manner belongs to the child and over which either of them have the administration except after securing judicial authorization, which shall be accorded by the District Court of the Judicial District where said property is situated, upon proof being furnished as to the necessity or utility of such transfer or burden."

Finally, in the year 1911, the above section was again amended, as appears from the Acts and Resolutions of the Legislative Assembly of Porto Rico of that year, page 118, as follows:

"Section 229: The exercise of the Patria Potestas does not authorize the father nor the mother to alienate or lay any encumbrances upon real property of any class whatever, or upon personal property, the value of which exceeds \$500, pertaining to the child, and which may be under the administration of the parents, without the previous authorization of the District Court wherein the property is situated and the administration of the necessity and utility of the alienation or encumbrance and in conformity with the provisions of Sections 80, 81 and 82 of an Act relative to special legal proceedings."

It will be observed that each successive amendment to this section of the Civil Code imposes greater limitations upon the power of the guardian in regard to the property of minors, for whose benefit it is needless to say such amendments were made. This shows conclusively that the Legislature has been vigilant and zealous in attempting to guard the property of minors, thereby limiting more and more the powers of the guardian and particularly designating the Court that is empowered to authorize the sale. This being true, how can it be contended that this designation of a Court by the Civil Code is or has become inoperative?

Touching on the Law of Procedure in Porto Rico, superceding that in force during the Spanish regime, we have the Act of the Legislative Assembly of Porto Rico of March 9, 1905, entitled "An Act Relating to Special Legal Proceedings," Section 80 of which provides as follows:

"In all cases where, according to the provisions of the Civil Code, the parents or the tutors of a minor shall be in need of judicial authorization to do anything referring to the keeping of the said minor or of his property, a petition shall be filed with the District Court of competent jurisdiction, setting forth under oath the necessity of the objects sought, the advantage in suing therefrom to the minor, and the reasons for the request."

This same Act, in Section 85, provides as follows:

"This Act shall take effect from and after its passage and all previous laws in conflict herewith are hereby repealed; but the special proceedings established in the Civil

Code, in the Mortgage Law and its Regulations, and in any other law, in so far as not provided for by this Act, shall remain in force."

In view of the enforcement of this Act, all commentaries regarding the effectiveness of Section 229 of the Civil Code, which governs the proceedings and designates the Court having jurisdiction of the sale of the property of minors, are superfluous. If the Special Legal Proceedings Act expressly allowed the Civil Code to remain in full force and effect, and if said Act by Section 80, which we have transcribed hereinbefore, provides, as it does, that the petition for leave of the Court "MUST BE PRESENTED IN THE DISTRICT COURT OF COMPETENT JURISDICTION," there can remain no doubt that such District Court of competent jurisdiction shall be that Court designated by Section 229 of the Civil Code; namely, that District Court where the property of the minors is located, for if all District Courts were of *competent* jurisdiction in the matter the Special Legal Proceedings Act would not have used the words: "A PETITION SHALL BE FILED WITH THE DISTRICT COURT OF COMPETENT JURISDICTION," inasmuch as all the District Courts of Porto Rico possess the same jurisdiction.

In 1907 suit was brought in the District Court of the United States for Porto Rico by *Maria Rios de Rubio v. Juan Garzot et al.*, seeking, among other things, the delivery of certain hereditary property and the division and partition thereof. The decedent always lived in the District of Humacao, where she died, and the property sought to be recovered and partitioned was situated in that Dis-

trict; and this Court in that case expressed itself as follows:

"By the Porto Rican Code of Civil Procedure, Article 62, Paragraph 5 (Art. 63), power to administer estates, both testamentary and intestate, is vested in the Judge of the last place of residence of the deceased. That the power thus conferred is exclusive is shown by the text of the same Article and by the comprehensive grant of authority embraced in the provisions of the Code, which follows, relating to the settlement of both testamentary and intestate successions."

Garzot v. Rubio, 309 U. S., 303.

We cannot understand, under the Law cited and its interpretation as enunciated by this Court in the *Garzot v. Rubio* case, *supra*, how it can be contended that the point involved in the instant case has never been passed upon either by this Court or by the Supreme Court of Porto Rico, as it is clear to our mind that this Court, in deciding the *Garzot v. Rubio* case, held that the Federal Court had no power to take cognizance of the matter and this Court did decide that the Court having jurisdiction over such matters was the Court of the last place of residence of the deceased, and that said power was exclusive. Such is the interpretation also given to the statute in Porto Rico.

Esteras v. Arroyo, 16 P. R. R., 689.

Martorell v. Ochoa, 23 P. R. R., 28.

Nazario v. Registrar, 16 P. R. R., 635.

We submit, therefore, that there should have been no doubt as to the interpretation of the law from and after the time that the *Garzot v. Rubio*

case was decided by this Court, and if any doubt existed prior thereto the rule of procedure should then have been established for all time, as unquestionably was the fact, as is shown by the decisions in the cases of *Esteras v. Arroyo* and *Nazario v. Registrar, supra*.

This principle was reaffirmed by the Supreme Court of Porto Rico in the case of

Baerga v. Registrar, decided May 20, 1921.

The petitioners contend that this is a typical case involving the doctrine of *stare decisis*, in that at the time that the District Court of San Juan authorized the sale in question it was then the well-established law of Porto Rico, especially under the decisions of the Courts of Spain, that in all matters of voluntary jurisdiction (*ex parte* matters), any Court having jurisdiction of similar matters became competent to entertain the application for such an authorization by the voluntary submission of the applicant, even though a certain Court was designated by another section of the Code of Civil Procedure or by special statute. And to substantiate their contention, decisions of the Supreme Court of Spain and of the General Directorate of Registries, as well as citations from Manresa's Commentaries on the Law of Civil Procedure and the Civil Code and also the case of *Sola v. Registrar*, have been cited.

Under the decisions of the Supreme Court of Spain, cited by petitioners, they undoubtedly sustain that in *ex parte* proceedings the petitioner may choose his Court and that such Court would be competent to take cognizance of the matter, but we should not lose sight of the fact that these

decisions were rendered in interpreting the Law of Civil Procedure of Spain, enacted there in 1855, by which (Section 1208) such line of procedure was expressly authorized therein, but we contend that that was not the case under the Law of Civil Procedure that superseded such enactment, and we feel confident that no like decision has ever been rendered by the Supreme Court of Spain, interpreting the sections of the Code applicable to the instant case which was in force at the time the sales herein took place, and we challenge the adverse party to cite one single case decided by the Supreme Court of Spain interpreting the Law of 1881 which changed the doctrine.

Consequently, the cases cited from the Supreme Court of Spain by the petitioners have no applicability either as jurisprudence or otherwise.

The decisions of the General Directorate of Registries, cited by counsel for petitioners, are neither decisions of the Supreme Court of Spain, nor of the Supreme Court of Porto Rico, and have no weight as such, inasmuch as the General Directorate of Registries of Spain is not a regular tribunal of justice, but simply a Board, whose decisions are not binding upon the Courts of Justice, since they are rendered in mere administrative appeals taken against the decisions of the Registrars of property.

"Decisions rendered in administrative appeals from decisions of Registrars of property are not binding upon the Courts."

Martorell v. Ochoa, 23 P. R. R., 28.

Therefore, how can it be contended for one moment that such decisions would be binding upon the highest Court of the nation when they are not

upon the inferior ones? And much less could such decisions be considered for the purposes connected with the doctrine of *stare decisis*.

We further urge upon the Court that the citations from Manresa's Commentaries, cited by petitioners, do not apply to the instant case. While Manresa as an authority on Civil Law in Spain cannot be questioned, and Courts frequently cite the author in illustrating certain questions of law, nevertheless his commentaries are not binding upon the Courts and, therefore, we fail to see how a conclusion can be reached in regard to the rule of *stare decisis* from Manresa's Commentaries. However, touching on this point and reading from Manresa's Commentaries on the Civil Code, Volume 2, pages 44 and 45, Third Edition, it is very clear that Manresa himself was in grave doubts when, after citing Paragraph 23 of Article 63 of the Law of Civil Procedure, the author concludes with the following words:

"However, to avoid any question it will be most prudent to apply to the judge of the domicile."

As will be noticed, far from expressing a firm conviction of his idea of the Law, the author states in substance that to be within the Law authority for the sale of property belonging to minors should be applied for to the Judge of his domicile.

Counsel for petitioners cites also the case of

Sola v. Registrar, 8 P. R. R., 205,

but we contend that the Supreme Court of Porto Rico completely reversed itself in a case decided

by it in the year 1915, where, in a unanimous decision, it stated as follows:

"The plain language of Article 164 of the Spanish Civil Code shows that the intention of the Legislature in enacting that authorization of Court should be necessary for alienating or encumbering the property of minors, was that such authorization should be granted by the Judge of the domicile of the minor and not by any other Judge, thus determining the authority which should complete the civil capacity of the father or the mother of the minor, which capacity can be completed only in the manner provided by said Article."

Martorell v. Ochoa, 23 P. R. R., 28.

Thus it was in the above-mentioned case for the first time that the matter relative to the sale of minors' property in connection with the jurisdiction of the Courts was construed. And it was conclusively held by the Supreme Court of Porto Rico that the only Court having jurisdiction of the matter was that Court mentioned in Section 229 of the Civil Code.

Therefore, it must be concluded that the contention of the petitioner to apply the doctrine of *stare decisis* is not substantiated, for it is well established that in order to make this doctrine applicable the particular point under discussion would have had to be decided several times, thus determining a fixed rule of property. Such is not the case.

On May 27, 1908, the date of the authorization of the Court on which the present litigation is based—no judgment whatsoever, either of the Supreme Court of Spain or of the Supreme Court of

Porto Rico, had been rendered holding that authorizations for the sale of property belonging to minors could be granted "BY ANY JUDGE OF THE ISLAND."

It is manifest, therefore, that the doctrine of *stare decisis* cannot properly be invoked, because the essential requirement of precedent is lacking.

Bragg v. Mayor, 141 Fed., 118.

Consolidated Rubber Co. v. Ferguson,
183 Fed., 756.

Hertz v. Woodman, 218 U. S., 205.

Citing from an old case which has been generally recognized as a true expression of a sound doctrine, we quote as follows:

"Of course, I am not saying that we must consecrate the mere blunders of those who went before us and stumble every time we come to the place where they have stumbled. A palpable mistake, violating justice, reason and law, must be corrected, no matter by whom it may have been made. There are cases in our books which bear such marks of haste and inattention that they demand reconsideration. There are some which must be disregarded because they cannot be reconciled with others. There are old decisions of which the authority has become obsolete, by a total alteration in the circumstances of the country and the progress of opinion."

McDowell v. Oyer, 21 Pa., 417-423.

If the Supreme Court of Porto Rico itself does not regard the cases relied upon by the petitioners herein, how then can opposing counsel seek to have this Court sustain the applicability of the doctrine

of *stare decisis*? Moreover, whatever may have been decided in the cases cited by counsel for petitioners, such decisions do not cover the point at issue, and even conceding that they did, which we deny, the doctrine therein involved is so erroneous that it cannot in any way serve as a basis for the rule of *stare decisis*.

We cannot agree with the learned counsel for the petitioners that error was committed by the United States Circuit Court of Appeals for the First Circuit **"in failing to apply the rule established by repeated decisions of this court, that a contract made on the faith of judicial interpretations of a statute cannot be impaired by a subsequent reversal of its decision."**

We fail to see where this well-known and established doctrine can be applied to the case at bar.

The Law in Porto Rico, as it stood at the time the properties belonging to your respondents were sold, left no room to doubt that the only Court having jurisdiction to grant authorization to sell property belonging to minors was solely that Court situated in the District wherein the minor resided or the property was located; and if the Supreme Court of Porto Rico in any case or cases established through its interpretation that any Court of the island would have jurisdiction through a submission of the parties (and which we deny), we contend that such ruling, if found to be erroneous, should be set aside, regardless of consequences, and the proper rule established once for all.

In the case of

Genessee v. Fitzhugh, 53 U. S., 455.

it was stated by this Court as follows:

"It is the decision in the case of *Thomas Jefferson* which mainly embarrasses the Court in the present inquiry. We are sensible of the great weight to which it is entitled, but at the same time we are convinced that if we follow it, we follow an erroneous decision into which the Court fell, when the great importance of the question as it now presents itself could not be foreseen; and the subject did not, therefore, receive that deliberate consideration which at this time would have been given to it by the eminent men who presided here when that case was decided. For the decision was made in 1825, when the commerce on the rivers of the West and on the lakes was in its infancy and of little importance and but little regarded compared with that of the present day."

See, also:

Kilbourn v. Thompson, 103 U. S., 377.

The fact, therefore, remains that the petitioners were not misled when purchasing the property of the minors by virtue of any judicial interpretation of the statute relating thereto, in view of the fact that the sale took place prior to the time when the statute had been interpreted for the first time by the Supreme Court of Porto Rico. This was in the year 1915 and that Court then held that the only Court that could authorize the sale of property belonging to minors was that Court designated in the Civil Code.

Martorell v. Ochoa, 23 P. R. R., 28.

This judgment was later reversed by a divided Court, in the same case of *Martorell v. Ochoa*, 25 P. R. R., 707 (the instant case), two Justices having dissented, the other three Justices being of the opinion that any Court was empowered to authorize the sale, the letter and the spirit of the Civil Code notwithstanding.

Conclusion.

The Civil Code of Porto Rico is very similar to the Louisiana Code, both having a common origin, and the former Law of Civil Procedure of Porto Rico was very similar also to that of Louisiana, and we refer in this connection to the following citation from a case in said State:

"An Act of the Legislature, 3 Martin's Digest 132-17, requires the assent of the Judge of the Parish where the minor resides, to make an alienation of his property valid. The evidence here shows that the parties were not residents of New Orleans; the father, a few days before the sale of the property, it is true, made a declaration in this City that it was his intention to take up his permanent residence here, but the law requires more, a declaration before a Judge of the Parish from which the party removes, as well as that where he intends to reside.

Considering, therefore, that the proper domicile of the minor was in the Parish of East Baton Rouge, I am of the opinion, that the whole of the proceedings before the Court of Probate were *coram non judice* and, of course, void."

Leonard's Tutor v. Mandeville, 3 La. Rep., 486; 9 Mart.

To the same effect see:

Hawkins v. Livingston, 10 Mart., 444.

Foley v. Moorhouse, 13 La. Ann., 301.

Fletcher v. Cavalier, 4 La., 279.

In the State of Illinois there exists a statute substantially the same as Section 229 of the Civil Code of Porto Rico, both as it stood prior and after the amendment of 1907 cited herein, and the Supreme Court of that State, interpreting the local statute, stated:

"The requirement of the statute that an application by a guardian to sell the real estate of his ward, shall be made in the County where the ward resides, or, in case the ward does not reside in the State, in some County where the whole or a part of the real estate is situated, is jurisdictional and any material deviation from these requirements, as to the Court in which the proceedings must be had, is fatal to the jurisdiction of the Court."

It has been judicially established that an infant cannot confer jurisdiction upon a Court by a voluntary appearance, nor can his parents or guardian.

Phelps v. Heaton, 79 Minn., 476.

In re Bartell, 9 Cal., 616.

Also see:

26 Cyc., 281.

We fail to see in the present case where any question of gravity exists any different than it would in any other case.

And we contend that the petition should be dismissed.

"Certiorari to review a judgment will not be granted by the Federal Supreme Court where such case, however important it may be to the petitioner, does not involve a question of gravity and general importance."

Fielder v. United States, 205 U. S., 292.

"The Supreme Court will sparingly exercise the power to require a case to be certified by the circuit court of appeal, and will exercise it only when the circumstances of the case show that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a state, or some matter affecting the interest of the nation in its internal or external relations, demands such exercise."

Forsyth v. Hammond, 166 U. S., 506.

"The Supreme Court will direct a case which cannot be brought to it by appeal or writ of error to be certified only where questions of gravity and importance are involved, or in the interest of uniformity of decision."

Lau Ow Bew v. United States, 144 U. S., 47.

"The jurisdiction of the Supreme Court of the United States to require, by certiorari or otherwise, a case to be certified from the circuit court of appeals for its review and determination, should be exercised only in cases of gravity and importance, or in order to secure uniformity of decision."

American Constr. Co. v. Jacksonville, T. & K. W. R. Co., 148 U. S., 372.

As stated on page 4 herein, there have been submitted to this Court two other cases brought up from the U. S. Circuit Court of Appeals for the First Circuit, on a writ of certiorari, which involve the identical question raised in the instant case, and counsel for respondents herein, who also represent the respondents in said two other cases, respectfully pray the Court to consider this brief as having also been submitted on behalf of the respondents in said two other cases, which are entitled as follows: *Joaquin Ramos Ferro and Hermanos Selles y Sobrino v. Felix Fabian et al.*, No. 726; *J. Ochoa y Hermano v. Miguel, Martorell y Torrens et al.*, No. 727.

For the reasons stated, we respectfully submit that the United States Circuit Court of Appeals for the First Circuit committed no error whatsoever in reversing the decision of the Supreme Court of Porto Rico, and, hence, we pray that the petition for certiorari herein be dismissed, with costs.

Respectfully submitted,

GEORGE B. HAYES,
FRANK ANTONSANTI,

Solicitors for Respondents,

42 Broadway,
Borough of Manhattan,
New York, N. Y.

U. S. Supreme Court, D. C.
FILED

JAN 29 1923

WM. F. STARKSBURY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1922.
No. 263.

JOSE J. BENITEZ DIAZ, in his own right and as
father with PATRIA POTESTAS over his
minor unemancipated children CARLOTA, JO-
SEFA and JOSE BENITEZ SAMPAYO and
DIEGO GARCIA ORTEGA,

Petitioners,

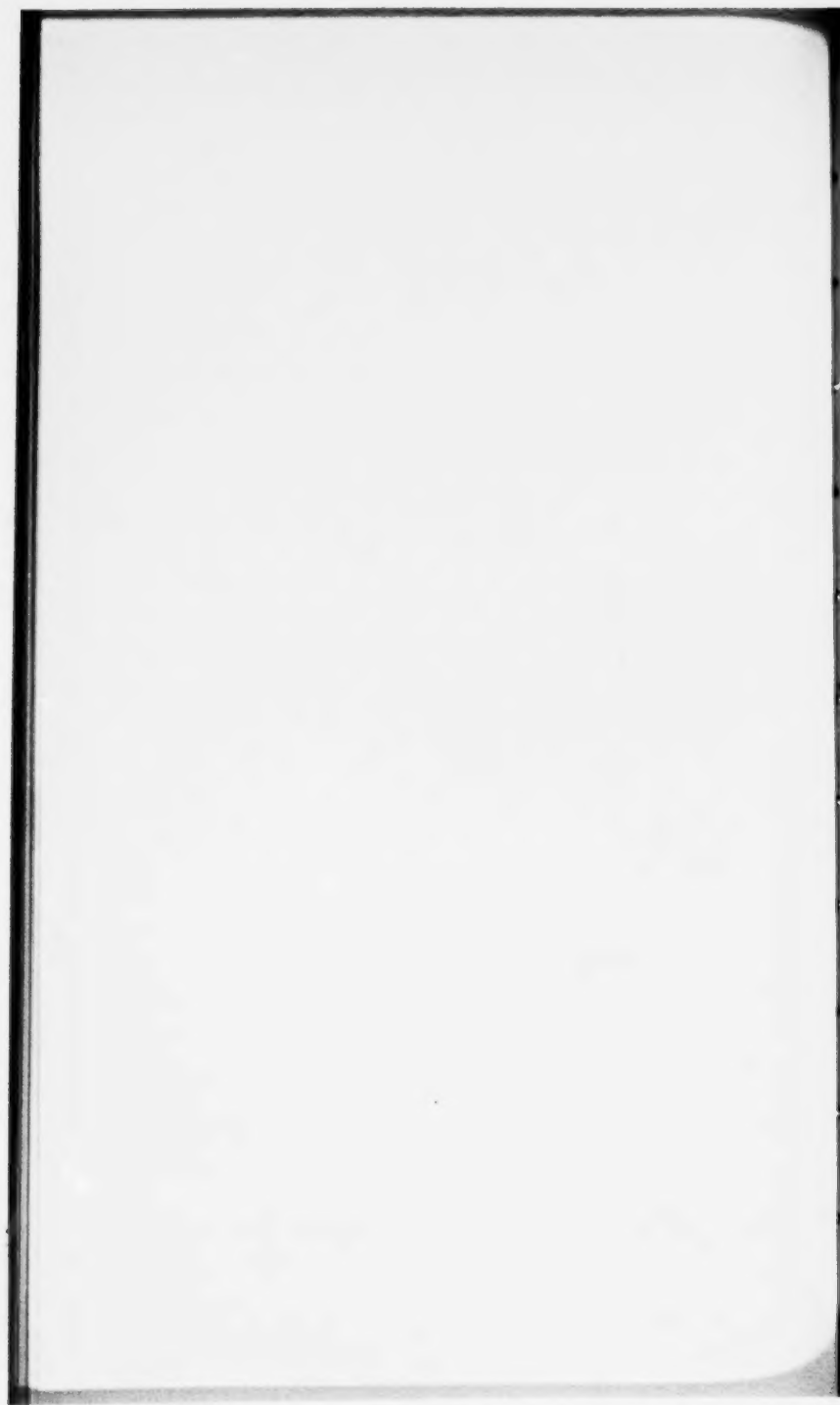
vs.

CARLOTA AND CLEMENTINA GONZALEZ Y
LUGO, represented by their guardian *ad litem*,
ARTURO APONTE, Jr., and MANUEL GON-
ZALEZ Y LUGO,

Respondents.

BRIEF FOR RESPONDENTS

JOSE A. POVENTUD,
FREDERICK S. TYLER,
FRANK ANTONSANTI,
Counsel for Respondents.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1922.

JOSE J. BENITEZ DIAZ in his own
right and as father with PATRIA
POTESTAS over his minor un-
emancipated children CARLOTA,
JOSEFA and JOSE BENITEZ SAM-
PAYO and DIEGO GARCIA ORTEGA,
Petitioners,

vs.

CARLOTA and CLEMENTINA GON-
ZALEZ Y LUGO, represented by
their Guardian *ad litem*, AR-
TURO APONTE, JR., and MANUEL
GONZALEZ Y LUGO,
Respondents.

Petition for
Certiorari
No. 263.

BRIEF FOR RESPONDENTS.

Statement of the Case.

The respondents herein, Carlota and Clemen-
tina Gonzalez y Lugo, by their guardian *ad litem*,
Arturo Aponte, Jr., and Manuel Gonzalez y
Lugo, plaintiffs below, brought this action in

the District Court for the Judicial District of Ponce, Porto Rico, against Jose J. Benitez Diaz, in his own right and in representation of his minor children, to recover certain interests claimed by them in real estate situated within the Judicial District of Humacao, Porto Rico, together with the rents and profits thereof, on the ground that the sale of these interests by the mother, as their guardian, to the petitioner by virtue of a deed dated the 5th day of June, 1908, under authority granted by the District Court for the Judicial District of San Juan on the 27th day of May, 1908, was null and void for the reason that the District Court for the Judicial District of San Juan did not have jurisdiction to decree the sale, alleging that the only Court having jurisdiction to authorize such sale was the District Court for the Judicial District of Humacao, Porto Rico, in whose jurisdiction the property sold was situated.

The said District Court for the Judicial District of Ponce, Porto Rico, declared that the decree of the District Court for the Judicial District of San Juan, granting authority to sell the property, as hereinbefore stated, in so far as it referred to the interests of the three plaintiffs in the said property, who were minors, was null, void and of no effect whatsoever, on the ground that the Court for the Judicial District of San Juan had no jurisdiction to enter its decree.

The petitioners herein, the defendants below, appealed from the said judgment of the District Court for the Judicial District of Ponce, Porto

Rico, to the Supreme Court of Porto Rico, which last-mentioned Court, by a vote of four to one, reversed the judgment of the said District Court for the Judicial District of Ponce, and directed that the complaint be dismissed, the Supreme Court of Porto Rico holding, in substance, that the parties to the *ex parte* application having submitted themselves that Court acquired jurisdiction.

Thereafter the respondents herein, plaintiffs below, appealed from the decision of the Supreme Court of Porto Rico to the United States Circuit Court of Appeals for the First Circuit, assigning, as error, the following, to wit:

"The Supreme Court of Porto Rico erred in holding that the District Court of San Juan was empowered and had jurisdiction to authorize Clementina Lugo Calzada, as the mother of her minor children, plaintiffs herein, to sell the real property herein involved and which is situated within the Judicial District of Humacao, and likewise in holding that said sale so made was valid and in full force and effect, notwithstanding that such authorization was given by a Court which was not a Court within the territorial district in which the said property herein involved was situated."

The case came on regularly before the United States Circuit Court of Appeals for the First Circuit and was fully argued by respective counsel and briefs were filed upon the questions of law, which both parties considered material, and on November 1, 1921, the said Circuit Court of Appeals rendered its opinion, to the effect

that the only Court of competent jurisdiction to authorize the sale of property belonging to minors was the Court for the Judicial District in which the property was situated and that the parties to *ex parte* proceedings in such cases could not submit themselves to the jurisdiction of the Court of any other District.

Under the above concise statement of the case, it is our contention that the decision of the United States Circuit Court of Appeals for the First Circuit was well founded, as the same faithfully interprets the law of Porto Rico on the subject.

However, defendants below, who are petitioners here, sought and obtained a writ of certiorari from this honorable Supreme Court of the United States, to review the said decision of the Circuit Court of Appeals for the First Circuit, and said petitioners erroneously contend that the Circuit Court of Appeals, in reversing the judgment of the Supreme Court of Porto Rico, erred:

1. In failing to apply the rule established by repeated decisions in this honorable court that a contract made on the faith of judicial interpretations of a statute cannot be impaired by a subsequent reversal of its decision.

2. In failing to apply the rule also established by repeated decisions of this honorable court that a local rule of property established and followed by the Supreme Court of Porto Rico, should not be reversed except upon a clear showing that it ~~was~~ **was** ~~error~~ **erroneous**.

3. In holding that the order of the District Court of San Juan authorizing the sale of the property of the respondents was null and void for lack of jurisdiction.

The case is now in this highest court of the Nation, therefore, for review on its merits.

That petitioners' foregoing contentions are groundless, since more painstaking, learned, just and elaborate decisions as those rendered by the Honorable Circuit Court of Appeals for the First Circuit, reversing the Porto Rico Supreme Court in this and two other similar cases, could not be found, will be demonstrated by the following statements, considerations and

Argument.

CONCURRING HOLDINGS BY THE PONCE DISTRICT COURT AND BY THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, WHICH SUFFICIENTLY ANSWER PETITIONERS' ASSIGNMENT OF SUPPOSED ERRORS HEREIN.

The Court of original jurisdiction in the present case, namely: The Ponce District Court, among other matters, adjudged and held:

“ . . . Passing now to questions of law, to be decided in this case, we anticipate the following conclusions whose grounds we shall successively set forth: First. The authorization granted by the District Court of San Juan, Section 1, on May 20, 1908, and the deed of purchase and sale of June 5,

1908, in so far as they relate to the joint interests of the three minor plaintiffs in the described properties, are null, inexistant, ineffectual and of no legal effect or value . . . The nullity of the authorization is absolutely clear in view of the foregoing sections of the Civil Code, and it has been so held and established by the Supreme Court of the United States and of Porto Rico, among other cases, in the following:

- Martorell v. Ochoa*, 23 P. R. R. 28;
- Ex parte Le Hardy*, 17 P. R. R. 985;
- Esteras v. Arroyo*, 16 P. R. R. 689;
- Nazario v. The Registrar*, 16 P. R. R. 635;
- Garzot v. Rubio*, 209 U. S. 303;
- Oliver v. Oliver*, 23 P. R. R. 168;
- Early v. Doe*, 57 U. S. 617-618;
- Longpre v. Diaz*, 237 U. S. 512, 59 L. Ed. 1080;
- Del Rosario v. Rucabado*, 23 P. R. R. 438.

" . . . It should not be forgotten that on March 14, 1907, the Legislature of Porto Rico amended section 229 of the Revised Civil Code, the amendment consisting mainly in designating, as the jurisdictional Court for granting authorization for the alienation or encumbrance of real estate belonging to minors, the District Court of the Judicial District WHEREIN THE PROPERTY IS SITUATED . . . (Rec. pgs. 21, 23, 26)."

The Supreme Court of Porto Rico reversed the Ponce District Court, by a vote of four to one, on the ground that any District Court in the Island was competent to grant authorization for

the alienation of minors' realty, provided that application was made to it, since such proceedings were, in their nature, *ex parte* (Rec. p~~153~~).

The Circuit Court of Appeals for the First Circuit, in turn, reversed the decision of the Porto Rico Supreme Court, remanded the case for further proceedings not inconsistent with its opinion, as amplified and explained by the opinion in *Ajenjo et al v. Ajenjo et al*, (276 Fed. Rep. 105), rendered the same day, and held:

“ . . . Whatever may have been the law and practice under the Spanish Civil Code, it is evident that, when the Legislative Assembly of Porto Rico enacted section 229 of the Civil Code, it intended to confine the authorization for the sale of real estate of minors to the District Court for the District in which the property is situated. We are confirmed in this view by the fact that the Legislative Assembly, in 1907, made an amendment which in clear and unambiguous language makes certain that this was its intent . . . We think it clear that the Legislative Assembly of Porto Rico, when it adopted the present Civil Code and the Code of Civil Procedure, intended to remove from the operation of sections 76 and 77 of the latter, applications for authorization to sell the real estate of minors. The amendment of section 229, made in 1907, designating the District Court of the District in which the land is situated as the Court to make the authorization instead of the place of the domicile of the minors, evinces a purpose to have the important matter of the alienation of a minor's property passed upon by a Court which would possess, or could easily obtain, knowledge of its value. It might authorize a sale at public auction, and, if

this be done, the sale is to be had in the presence of and under the direction of the Marshall of the District after 'publication of the corresponding edicts in the customary places and in a newspaper having a circulation in the District'. Judicial Proceedings, title 5, sec. 82. The only reasonable interpretation to be placed upon sections 80, 81 and 82 of this title is that all the proceedings are to be had in the District where the land is situated. Section 229 was again amended in 1911 (Laws 1911, p. 118), and made to extend to the alienation or incumbrance of personal property above the value of \$500, and making the authorization of the District Court wherein the property is situate necessary. The Legislative Assembly conferred upon the parent power to alienate the property of a minor under Partia Potestas, after obtaining authorization in a certain manner, which cannot be departed from . . . It was within the undoubted power of the Legislative Assembly of Porto Rico to adopt or reject any of the provisions of the Spanish Civil Code in force at the time the American Civil Code was adopted in 1902; and if, in the exercise of a wise public policy, it provided in clear and unambiguous language that judicial authorization for the sale of lands of minors could only be given by the Court of the District in which the land is situated and where knowledge of its value could be most easily obtained and the interests of the minor most safely guarded, this cannot be overridden by judicial interpretation. We think not only that the language is clear, but, also, looking at the history of the act and the amendments made to it, that it clearly expresses the legislative intent . . .

Lugo et al v. Benitez et al, 276 Fed.
Rep. 108;

Ajenjo et al. v. Ajenjo, et al., 276 Fed.
Rep. 105, 106, 107, 108.

“ . . . Manresa and Scaevola, distinguished commentators upon Spanish law, are cited, and also judgments of the Supreme Court of Spain of July 22 and September 30, 1857, October 6, 1866, and June 2, 1877 Decisions of the General Directorate of Registries of Spain, are cited to the effect that the question of jurisdiction does not arise in *ex parte* proceedings because conferred by the mere act of applying to the Court. It is stated by counsel, however, and not denied, that section 1208 of the Spanish Law of Civil Procedure was omitted in the revision which went into effect in Spain in 1881, and does not appear in the Law of Civil Procedure which was made applicable to Porto Rico in 1886 We think, in the discussion of this case, the Supreme Court of Porto Rico failed to give due consideration to the important fact that minors, in every civilized country and under every known form of jurisprudence, are a special care of the State; that their interests are carefully guarded by the Courts, and that neither father nor mother, without some authorization from the sovereign power itself, has any authority to sell or incumber the property of a minor child. . . . The Civil Code in Porto Rico in 1902 pointed out the manner in which this authorization could be obtained, and it is elementary that this method must be strictly complied with, for the State itself, as a protector of the rights of the minor, is interested, and under the provisions of the Spanish Code the Fiscal,

the attorney of the State, was required to be present at the hearing upon the application and to protect the interests of the minor . . . the Court to which application is to be made for authorization to alienate the property of a minor cannot be chosen, for, if the parent, in the exercise of *Patria Potestas*, could choose a Court to which application could be made for such authorization, it was entirely unnecessary to provide, as subsection 23 does, that, in the authorization for the sale of property of minors or incapacitated persons, 'the competent judge shall be that of the place where the property may be situated, or that of the domicile of the person to whom it belongs'. The only reasonable interpretation that can be placed upon this section is that authorization for the sale of property of minors was not intended to be included in the cases to which submission would apply, under articles 56 and 58 . . ."

Martorell et al v. Ochoa et al, 276
Fed. Rep. 99, 101, 103, 104. (Sim-
ilar case decided by the Circuit
Court of Appeals, First Circuit.)

Statement regarding certain utterance attributed by petitioners to Justice Hutchinson, of the P. R. Supreme Court.

Replying to the argument of the petitioners herein, to the effect that it was stated in the opinion of Judge Hutchinson, one of the Associate Justices of the Supreme Court of Porto Rico, that hundred and perhaps thousands of

recorded titles of real property in Porto Rico will be invalidated if the judgment of the United States Circuit Court of Appeals herein is allowed to stand unchallenged, we desire to state that only two other cases have arisen in Porto Rico involving similar questions, as in the instant case, to wit:

Martorell v. Ochoa, 26 P. R. R., 625,
Ajenjo v. Rosa, 26 P. R. R., 648.

In the above cases the identical question was involved as in the instant case and decided in the same manner, as above stated, by the United States Circuit Court of Appeals for the First Circuit and which cases have also been brought before this Court upon writs of certiorari.

Assuming for the sake of argument that the rule in Porto Rico, as laid down by the Supreme Court of that island, prior to the decision of the Supreme Court of the United States in the case of *Garzot v. Rubio*, 309 U. S., 303 (which we do not admit), was to the effect that parties could submit to any Court in *ex parte* matters similar to the one at bar, the fact remains that, since the rendering of the opinion in the *Garzot v. Rubio* case, some fourteen years ago, the two cases cited above and the instant cause are absolutely the only cases involving the question that has been presented, and it certainly would be reasonable to assume that if there had been any further analogous cases they would have been submitted to the Courts ere this, especially so since the year 1915, when the Supreme Court of Porto Rico decided unequivocally that the

sale of property belonging to minors was null and void unless the Court authorizing the sale was one of competent jurisdiction, and, therefore, we fail to find any logic in the statement cited by petitioners as having been made by Judge Hutchinson.

Besides, the P. R. Supreme Court, in *Martorell v. Ochoa*, 23 P. R. R. 28, said:

“In the examination which we have made we have not found a *single case* in which the same question now submitted to us has been raised and decided.”

ONLY THE DISTRICT COURT FOR THE JUDICIAL DISTRICT WHEREIN THE PROPERTY INVOLVED IS SITUATED, HAS JURISDICTION TO AUTHORIZE THE SALE OF MINORS' REAL ESTATE IN PORTO RICO.

History, Legislation and Precedents.

A.

Only 3 cases in Porto Rico involving similar questions.

Three cases have arisen in Porto Rico involving a similar question, namely:

Martorell v. Ochoa, 26 P. R. R. 625;

Ajenjo v. Rosa, 26 P. R. R. 648;

Gonzalez v. Benitez, 27 P. R. R. 364

the last being the case at bar.

The above three cases were appealed to the honorable Circuit Court of Appeals, First Circuit, and all of them are now here on certiorari. These are absolutely the only cases that have presented themselves during the fourteen years that have elapsed since the Supreme Court of the United States on April 6, 1908, decided the case of *Garzot v. Rubio*, 209 U. S. 303, 52 Law Ed. 209. Had there been any further analogous cases they undoubtedly would have been submitted to the courts, more especially so since in 1915, in disposing initially of the case of *Martorell v. Ochoa*, (23 P. R. R. 28) the Supreme Court of Porto Rico decided in a firm, unambiguous and emphatic manner that the sale of property belonging to minors is null unless the court authorizing the sale is the court of competent jurisdiction.

The case at bar, like *Martorell v. Ochoa* and *Ajenjo v. Rosa*, *supra*, is a case involving the sale of minors' property without the authorization of the competent court.

This question, since it affects minors in whose welfare the State is concerned, is of great weight inasmuch as it embraces a question of public policy. Minors have always been the object of special contemplation and the State as well as the courts have never ceased to watch over their interests. If this were otherwise society would not rest on a solid foundation and nations would fail to accomplish their mission of civilization in the world.

In the case now pending before this Honorable Court, the minors, respondents, herein,

were the owners of an interest in certain real property situated in the District of Humacao, Island of Porto Rico. The judge of the court of the said district, who under the law was the only judge empowered to authorize the sale of said real estate, was not even consulted. On the contrary, the mother and guardian of the minors applied to a remote court, that of San Juan, for an order authorizing the sale, which order was granted. This occurred in May, 1908, that is, after the decision in the case of *Garzot v. Rubio*, *supra*. In 1913 a complaint was filed in the district court praying for the annulment of the said sale.

B.

on submission
The laws of Civil Procedure [^]not applicable to ex parte matters.

What was the jurisprudence controlling the matter when this action was brought? What law, what statute was applicable? What sources of investigation were open for the purpose of arriving at a definite conclusion?

At the time of the sale of the real property of the minors in this case, namely, in the year 1908, the revised Civil Code was in force and effect in Porto Rico, section 229 thereof being amended in 1907, (Acts and Resolutions of 1907, p. 285.)

From the time of Spanish sovereignty up to the present, two civil codes have been in force in Porto Rico. The first went into effect on Jan-

uary 1, 1890 by virtue of Royal Decree of July 31, 1889, and was operative until June 30, 1902. The second became effective on July 1 of the same year, 1902, and is still in force and effect. When the first Code was in effect in Porto Rico the Spanish Law of Civil Procedure of January 1, 1886, established by virtue of Royal Decree of September 25 of the previous year, governed. (*Martorell v. Ochoa*, 23 P. R. R. 28).

The said Spanish Law of Civil Procedure of 1886, contains the following three sections, to wit:

“Art. 56.—Any judge impliedly or expressly agreed upon by the litigants shall be competent to take cognizance of the suits arising from actions of all kinds.

“This submission, however, can only be made to a judge exercising ordinary jurisdiction and who is competent to take cognizance of questions similar to and of the same kind as the one submitted.

“Art. 58.—An implied submission is made:

“First. By the plaintiff, by the act of filing his complaint before the judge.

“Second. By the defendant when after his appearance is entered in the action, he takes any further steps therein, except to formally object to the jurisdiction of the judge by declinature.

“ART. 63.—In order to determine competency, in cases other than those mentioned in the foregoing articles, the following rules shall apply:

.

"23.—In authorizations for the sale of property of minors or incapacitated persons, the competent judge shall be that of the place where the property may be situated, or that of the domicile of the persons to whom it belongs."

When the Spanish Civil Code went into effect in the year 1890, section 164 thereof read as follows:

"SECTION 164.—The father, or the mother in the proper case, cannot alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity and after authorization from the Judge of the domicile, hearing the Department of Public Prosecution, except the provisions, which, with regard to the effects of transfers, the Mortgage Law establishes."

Until June 30, 1904, the Spanish Law of Civil Procedure was in force in Porto Rico.

On July 1, 1904, the new Code of Civil Procedure took effect, which is still in force and is almost literally the same as the Codes of Civil Procedure of California, Idaho, and certain other States of the American Union, as can be observed by a simple comparison between the various codes, except that jury trials were not made a part of the regular civil procedure in Porto Rico.

The Supreme Court of Porto Rico, however, states that Sections 76 and 77 of this Code are of Spanish origin, being equivalent to Sections 56 and 58 of the Spanish Law of Civil Pro-

cedure, just above set out. A comparison of these sections is the best answer to the statement.

On the other hand, Sections 76 and 77 of the Porto Rican 1904 Code of Civil Procedure read as follows:

"SECTION 76. In accordance with its jurisdiction, a court shall have cognizance of the suits to which the maintenance of all kinds of actions may give rise, when the *parties* may have agreed to submit the suit to decision of court.

"SECTION 77. The submissions shall be understood to be made:

1. By the written *agreement* of the *parties*.

2. By the *plaintiff* through the mere act of applying to the court and filing the *complaint*.

3. By the *defendant* when, after his appearance in court, he takes any step other than to request that the trial be held in the proper court."

And by reason of the similarity which the Supreme Court of Porto Rico has found between these sections, it stated (Transcript of Record, p. 153):

"And the old construction which the Supreme Court of Spain established in its judgments of July 22nd and September 30th, 1876 and June 2, 1877 is that in matters of *ex parte* jurisdiction the question of territorial jurisdiction is not considered because the law confers this upon the court in which the petition is filed."

In this connection we may observe that the Supreme Court of Porto Rico fell into a most serious error.

In the first place, the Spanish Law of Civil Procedure took effect on January 1, 1886, and the judgments of the Supreme Court of Spain above quoted are of the years 1876 and 1877, that is to say, of a period ten years prior to said date, when the Spanish Civil Procedure Law of 1855 was still in force, which in Section 1208 expressly permitted any judge to take cognizance of *ex parte* matters. That law, however, was repealed in Spain in 1881, and in the new law which superseded it, Section 1208 was omitted, for which reason the provisions of said section had no further effect.

In the second place, the Supreme Court of Spain since the enactment of the procedure law of 1881 has never decided that any court has jurisdiction in *ex parte* matters. This is elementary, and we challenge anyone to produce a single Spanish authority upholding such a contention. Moreover, in cases of the sale of the property of minors, it has never been decided in Spain, either before 1881 or after that time, that any court may authorize the same.

Had there been any decision of that kind petitioners or the P. R. Supreme Court would certainly not have lost the opportunity to quote the same.

Further, we may refer to Article 71 of the Spanish Code of Civil Procedure in force in Porto Rico until 1904, which clearly shows that the provisions of law in special cases must be carefully complied with:

"ARTICLE 71: The rules established in the foregoing Articles shall be understood without prejudice to the provisions of law in special cases."

But let us give all advantages to petitioners for the sake of argument and suppose that even very lately, in the present year, the Supreme Court of Spain had decided that in *ex parte* matters any court has jurisdiction. Can it be said that such a theory could be applied in Porto Rico under the Porto Rican laws?

The theory of the submission of parties is clearly set forth in Sections 76 and 77 of the Code of Civil Procedure of Porto Rico, enacted in 1904, which sections have been above set out.

Is it not clear that in Porto Rico the theory of submission is not applicable in *ex parte* matters? Is it not evident that in these sections of the law reference is made only to "suits" in which "the parties" have "agreed to submit the suit" to a particular court? It is also to be noted that Section 77 determines how the submission is to be made, viz:

1. By the *written agreement* of the *parties*.
2. By the *plaintiff* through the mere act of applying to the court and filing the *complaint*.
3. By the *defendant* when, after his appearance in court, he takes any step other than to request that the trial be held in the proper court.

These rules clearly show that the Sections refer to "suits" and not to *ex parte* matters relating to the sale of property of minors in which there are no "plaintiffs" nor "defendants" nor can there be any "written agreement of the parties".

But even supposing that these sections refer also to *ex parte* matters (a situation which it is impossible to suppose, except for the sake of this argument), even conceding this, could these sections prevail against the clear letter and spirit of Section 229 of the Civil Code which, as amended, became effective in 1907, three years later than the Code of Civil Procedure? What was the intention of the lawmaker when he emphatically provided that the *authorization for the sale of the property of minors "shall be accorded by the District Court of the Judicial District where said property is situated?"*

In the year 1907 Sections 76 and 77 of the Code of Civil Procedure were in force, just as they are today. And in that same year Section 229 of the Civil Code was amended to determine *which court shall authorize the sale of minors' real property.*

Therefore, even granting that the theory of submission prevailed at that time in *ex parte* matters, such theory remained without force or effect from and after the promulgation of Section 229 of the Civil Code of 1902, as amended in 1907, since this section conferred *exclusive* jurisdiction upon the Court of the Judicial District where the property of the minor is situated. Nothing could be clearer and sounder.

Besides, Sections 76 and 77 of the Code of Civil Procedure providing for the submission of parties do not obtain in *ex parte* proceedings, inasmuch as they refer to "*actions*" or "*suits*" and not to "*ex parte proceedings*."

An *ex parte proceeding* has been defined by Black as

"A proceeding at the instance and for the benefit of one party only and without notice to or contestation by any person adversely interested."

See 18 Cyc. 1500.

An action contemplates "the act of three parties, the plaintiff, the defendant and the court."

Wynn v. Tallapoosa County Bank, 53 So. 228, 237.

The above cited sections relate to "*actions*" between one or several "*plaintiffs*" and one or several "*defendants*", and consequently reference is made therein to "*plaintiffs*" and "*defendants*", which are terms unknown in an *ex parte* proceeding.

C.

Theory of submission inapplicable when there is special law on subject.

It is not our purpose to discuss at this time whether section 164 of Civil Code of 1890 was repugnant to subdivision 23 of article 63 of the Law of Civil Procedure in force in 1890. Ar-

title 71 of the said Law of Civil Procedure made express reservation in regard to special laws. This is shown by the following:

“ART. 71.—The rules established in the foregoing Articles shall be understood without prejudice to the PROVISIONS OF LAW IN SPECIAL CASES.”

And inasmuch as section 164 of the Civil Code of 1890 contains a special substantive provision, as is that relating to the matter of the sale of property belonging to minors, there is no doubt that the Civil Code should prevail.

What we will say, however, is that whether viewed from the standpoint of the Spanish Law of Civil Procedure of 1886 (Art. 63, subdivision 23), or from the standpoint of section 164 of the Spanish 1890 Civil Code, it cannot be denied that a question exists and that the same is absolute and conclusive, namely, that if the theory of submission were allowed to prevail, the provision set out in subdivision 23 of article 63 of the Spanish Law of Civil Procedure immediately following the articles referring to such submission, reading thus:

“In authorizations for the sale of property of minors or incapacitated persons, the competent judge shall be that of the place where the PROPERTY MAY BE SITUATED, or that of the domicile of the persons to whom it belongs.”

would be superfluous. If our contention is not sound, subdivision 23 would serve no purpose and result in an absurdity. And even on the hypoth-

esis that the Spanish Legislature intended to establish an absurdity in the said law at the time of its enactment (which we cannot admit), from the moment section 164 of the Civil Code designated the court charged with the duty of judicially authorizing the sale of minors' property, such provision confers an *exclusive jurisdiction thereon*. If this construction is faulty, the inclusion of such a precept in one of the articles of the said Civil Code would be idle and superfluous, for if the scope of the Law of Civil Procedure went so far in the matter of submission, what was the purpose of section 164 of the Civil Code? What was the object of specifying so emphatically the court having jurisdiction to make the order authorizing the sale?

But now, let us suppose for a moment the absurdity that the 1904 Code of Civil Procedure of Porto Rico expressly authorized submission in cases like the present.

In such event we would have something more tangible than a mere conjecture. But even so, this provision could not prevail against the clear mandate of Section 229 of the Civil Code.

The Code of Civil Procedure became effective in 1904, and the Civil Code, in so far as it refers to Section 229, as amended, became effective in 1907. We would thus have a general law relating to *ex parte* matters, and a special law referring to a concrete case: the sale of the property of minors, and specifying what court must grant permission for the same. The former provision would be of the year 1904 and the

latter of the year 1907. Would it be possible to accept a submission in such a case?

“Hence, where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act or provision, the special act *must be taken as* intended to constitute an *exception* to the general act as the Legislature is not presumed to have intended a conflict” (Black on Interpretation of Laws, 2d Ed., pp. 328-329).

It is thus evident that even though the Code of Civil Procedure should generally permit submission in all matters, both *ex parte* and *contested* (which it does not), yet from the moment the Civil Code *specially* and *particularly* designates the court which ^{must} authorize the sale of properties of minors, the latter provision must prevail, as it is the special law relating to the matter.

The American Code of Civil Procedure became effective in 1904. Section 229 of the Civil Code, as amended, became effective in 1907. The former refers to “submission” in contested matters and makes no mention of *ex parte* matters. Section 229 of the Civil Code relates to the sale of the property of minors, which is an *ex parte* matter, and in the following language specifies the court which is to grant the authorization:

“Which shall be accorded by the District Court of the judicial district where said property is situated”.

In *ex parte* proceedings, the statute must be strictly observed.

Early v. Doe, 57 U. S., 617-618, 16 How. (U. S.) 610.

Thus, there is no alternative but to conclude that the legislator intended to give *exclusive jurisdiction* to the court of the place where the minor's real property is situated. If it were otherwise, the clear and mandatory provision of Section 229 of the Civil Code, as amended in 1907, would be superfluous.

Inasmuch as jurisdiction has been defined for these matters by Section 229 of the Civil Code of Porto Rico, as amended in 1907, it is unquestionable that that jurisdiction cannot be shifted or moved at a party's will.

“JURISDICTION AS AFFECTED BY SITUATION OF PROPERTY OR DOMICILE OF WARD.—In some states jurisdiction for a sale of minor's land on application of his guardian is in the court of the county in which the land is situated, although the guardian may have been irregularly appointed. In other states the court of the county in which the guardian received his appointment has jurisdiction to order sales of wards' real estate whether situated in that county or in another. If a probate court appoints a guardian for an infant whose domicile and property are situated in another county, and orders a sale thereof, the sale is void for want of jurisdiction in the court to make the appointment and order of sale” (21 *Cyc.* 121).

It is inconceivable how it could be possible to sustain the theory that a guardian may dispose of a minor's real estate by resorting to any court that he may please, where the law specifically provides and requires that he should resort to the court where the property is situated, this being the court vested with power to authorize the alienation of said real estate. To hold otherwise is to permit that a minor's estate could run the imminent risk of being unduly lost, as it happened in this case. The law cannot tolerate such an outrage.

D.

Section 229 of the Civil Code, as amended in 1907, enacted to protect minors.

The foregoing were the laws in force in Porto Rico during Spanish sovereignty and on the basis thereof not a single judgment was handed down either by the Supreme Court of Spain or by the former Supreme Court of Porto Rico (Audiencia Territorial) holding that the theory of submission could be applied in the matter of the authorization of the sale of property belonging to minors. There is absolutely no jurisprudence to uphold the theory of the petitioners.

In the year 1898 Spanish sovereignty ceased in Porto Rico and in the year 1902 a new civil code was enacted, section 229 of which reads:

“The father and the mother cannot alienate any real property belonging to their children, the usufruct of which they receive

or for which they have the administration, nor can they burden the same except by mutual consent, and after securing the authorization of the *district court of their domicile*.

This article was amended in 1907 as follows:

"The exercise of the PATRIA POTESTAS does not authorize the father or mother to alienate or burden real property which in any manner belongs to the child and over which either of them have the administration, except after securing judicial authorization WHICH SHALL BE ACCORDED BY THE DISTRICT COURT OF THE JUDICIAL DISTRICT WHERE SAID PROPERTY IS SITUATED upon proof being furnished as to the necessity or utility of such transfer or burden." (Acts and Resolutions of 1907, p. 285.)

Finally, in the year 1911, said section was again amended as follows:

SECTION 229.—The exercise of the 'patria potestas' does not authorize the father nor the mother to alienate or lay any encumbrances upon real property of any class whatever, or upon personal property, the value of which exceeds five hundred dollars, pertaining to the child and which may be under the administration of the parents, without the previous authorization of the district court wherein the property is situate and the demonstration of the necessity and utility of the alienation or encumbrance and in conformity with the provisions of sections 80, 81 and 82 of an act relative to special legal proceedings." (Acts and Resolutions of 1911, p. 118.)

It will be noted that each successive amendment to this section of the Civil Code imposes greater limitations upon the power of the guardian in regard to the property of minors, in whose benefit such amendments were undoubtedly made. This shows that the legislator has been vigilant and zealous in contemplating the property of minors, limiting more and more the powers of the guardian and unequivocally designating the Court that is empowered to authorize the sale. If this is true, how can it be contended that this designation of a court by the said Civil Code is or has become inoperative? Thus far as regards the Civil Code of Porto Rico.

E.

Court of competent jurisdiction only that designated in Civil Code.

Now, on July 1, 1904, there went into effect in Porto Rico the new Code of Civil Procedure, repealing the former Law of Civil Procedure in force under the Spanish regime from January 1, 1886. Finally, one year later, that is, on March 9, 1905, there was enacted a statute entitled "AN ACT RELATING TO SPECIAL LEGAL PROCEEDINGS," section 80 of which provides as follows:

"In all cases where, according to the provisions of the Civil Code, the parents or the tutors of a minor shall be in need of judicial authorization to do anything referring to the keeping of the said minor or of his prop-

erty, a petition shall be filed with the district court of '*competent*' jurisdiction setting forth under oath the necessity of the object sought, the advantage ensuing therefrom to the minor and the reasons for the request." (Italics ours.)

The law also requires that minors' realty shall be sold at public auction in the presence of and under the direction of the Marshal of the District after "publication of the corresponding edicts in the customary places and in a newspaper having a circulation in the District."

Sec. 1621 of Compilation of the Rev. Statutes and Codes of P. R., p. 314.

This also irresistibly shows that all proceedings ⁱⁿ for the sale of minors' lands are to be had in the district where the land is situated.

The last section of the said Special Legal Proceedings Act reads thus:

"SECTION 85.—This act shall take effect from and after its passage, and all previous laws in conflict herewith are hereby repealed; but the special proceedings established in the Civil Code, in the mortgage law and its regulations, and in any other law, in so far as not provided for by this act, remain in force."

Upon and in view of the enforcement of this act, all commentaries regarding the effectiveness of section 229 of the Civil Code, as amended in 1907, which governs the proceedings and designates the court having jurisdiction of the sale of the property of minors, are superfluous. If the

Special Legal Proceedings Act expressly allowed the Civil Code to remain in full force and effect, and if said Act by section 80, which we have transcribed herein, provides that the petition for leave of the court **MUST BE PRESENTED IN THE DISTRICT COURT OF COMPETENT JURISDICTION**, there can be no doubt that such district court of "*competent jurisdiction*" shall be that designated by section 229 of the Civil Code, namely, that where the property of the minors is located, since if all district courts were of '*competent*' jurisdiction in the matter, the Special Legal Proceeding Act would not have employed the following words "**A PETITION SHALL BE FILED WITH THE DISTRICT COURT OF 'COMPETENT JURISDICTION,'**" inasmuch as all the district courts of Porto Rico are of equal jurisdiction.

"We are of the opinion that the language 'by a Probate Court of competent jurisdiction' signifies the probate court whose jurisdiction it is proper to invoke in the particular case in hand.—Sec. 6, C. 38, p. 415 Pub. Stats., provides that the application for license to sell *must* be made to the probate court of the County in which the guardian was appointed." (*Montem v. Purdy*, 11 Minn. 384.)

In the case of *Spellman v. Dowse*, 79 Ill. 66, the Supreme Court of that State said:

"The requirement of the statute that an application by a guardian to sell the real estate of his ward shall be made in the county where the ward resides, or, in case the ward does not reside in the state, in

some county where the whole or a part of the real estate is situated, IS JURISDICTIONAL; and any material deviation from these requirements, as to the court in which the proceedings must be had, is FATAL TO THE JURISDICTION OF THE COURT."

See also: *Early v. Doe*, 57 U. S. 617-618.

F.

The Case of *Sola v. Registrar*.

Under these circumstances, in March 1905, the Supreme Court of Porto Rico disposed of the case of *Sola v. Registrar* (8 P. R. R. 205), establishing the following doctrine:

"It is a general principle in questions of jurisdiction that a court has cognizance of the suits to which the maintenance of all kinds of actions may give rise when the parties have submitted themselves, either expressly or impliedly, to its jurisdiction, providing that it has jurisdiction in matters of the same nature and in the same instance. This is a principle sanctioned by sections 76 and 77 of the New Code of Civil Procedure."

The facts which gave rise to the said action took place about the month of August, 1904, that is, immediately after the enactment of the new Code of Civil Procedure taken from the Codes of Idaho and California, thus embodying American principles beginning with the chapter relating to the organization of courts and their jurisdiction up to the taking of appeals.

It will suffice to glance at the said judgment, drawn up in its old form, to reach the conclusion that when such judgment was rendered the jurisprudence of Porto Rico was yet in an embryonic state. And with due deference to the honorable P. R. Supreme Court we respectfully submit that such judgment is erroneous and mistaken and was not based upon any precept of the old or modern law. For that reason it was promptly reversed. (*Esteras v. Arroyo*, 16 P. R. R. 689; *Nazario v. Registrar*, 16 P. R. R. 635.)

G.

The case of Garzot v. Rubio, construed by the P. R. Supreme Court.

In this condition of affairs, on April 6, 1908, the Supreme Court of the United States decided the case of *Garzot v. Rubio*, 209 U. S. 303, 28 Sup. Ct. 548, 52 L. ed. 794.

It appears that a suit was brought in the U. S. Court for the District of Porto Rico against Garzot seeking, among other things, the delivery of certain hereditary property and the division and partition thereof. The decedent always lived in the District of Humacao, where he died, and the property was situated in that district. No doubt remains, then, that in declaring what court had jurisdiction of the case it was definitely decided what interpretation should be given to the old law of Civil Procedure. The said court expressed itself as follows (parenthesis and italics ours):

"By the Porto Rico Code of Civil Procedure, art. 62, par. 5 (art. 63), power to administer estates, both testamentary and intestate, is vested in the judge of the last place of residence of the deceased. THAT THE POWER THUS CONFERRED IS EXCLUSIVE IS SHOWN BY THE TEXT OF THE SAME ARTICLE and by the comprehensive grant of authority embraced in the provisions of the Code which follows, relating to the settlement of both testamentary and intestate successions."

It cannot be contended that this decision is *obiter dicta* so far as it relates to insular courts, since if this were so no citation of our Code of Civil Procedure should have been made. It would have sufficed to refer to the Act of Congress creating the Federal Court. The main object of said case was precisely to determine what court in Porto Rico had jurisdiction to dispose of cases of settlement of decedents' estates, both testamentary and intestate.

And the Supreme Court of the United States in disposing of the case and deciding that the Federal Court had no power to take cognizance of the matter, had to decide what court was vested with such jurisdiction, and this it did, holding that such jurisdiction "IS VESTED IN THE JUDGE OF THE LAST PLACE OF RESIDENCE OF THE DECEASED, SAID POWER BEING EXCLUSIVE." These are the facts and such is the interpretation invariably given to said case in this island. (*Esteras v. Arroyo*, 16 P. R. R. 689; *Martorell v. Ochoa*, 23 P. R. R. 28; *Nazario v. Registrar*, 16 P. R. R. 635).

If any idea existed that under the old Law of Civil Procedure a person, in an *ex parte* proceeding, could elect the court most convenient to him, such idea disappeared from the day the said Code was construed in the case of *Garzot v. Rubio*, *supra*. If prior to that day any doubt had existed, it was effectually dispelled and the rule of procedure to be followed in Porto Rico was established for all times, and the decisions in the cases of *Esteras v. Arroyo*, 16 P. R. R. 689 and *Nazario v. Registrar*, 16 P. R. R. 635, served firmly to establish in our jurisprudence the true concept and meaning of the term "jurisdiction". This principle has just been reaffirmed by the P. R. Supreme Court itself in the case of *Baerga v. Registrar*, decided May 20, 1921, 29 P. R. R. 440-442. We shall refer to this case later.

The foregoing is a detailed history of Portorican legislation regarding the matter in dispute and the jurisprudence in relation thereto.

There was no rule of property or of stare decisis in this case.

This case should have been decided by the P. R. Supreme Court in keeping with the opinion delivered in the case of *Martorell v. Ochoa*, 23 P. R. R. 28, but as that case was later reversed, although by a divided court, the case at bar was decided against the plaintiffs,—in said Supreme Court, in accordance with such reversal.

The P. R. Supreme Court based its opinion on the fact that

“The Supreme Court of Spain and the General Directorate of Registries have established the general rule that in matters *ex parte* the law gives jurisdiction to the Court to which application is made; and as the authorization to convey property belonging to minors is an *ex parte* proceeding, the said doctrine is applicable to such authorization” (R. p. 153).

The attorneys for petitioners contend that this is a typical case involving the doctrine of *stare decisis* because when the sale was effected, namely, in 1908, it was the settled jurisprudence of Spain and Porto Rico that the petitioner in an *ex parte* proceeding can elect the court most convenient to him. In support of such contention they submit the following authorities, which we divide into six different groups, to wit:

- A. Decisions of the Supreme Court of Spain of July 22 and Sept. 30, 1875 (32 Jur. Civ. 424 and 491), Oct. 6, 1876 (34 Id. 677) and June 2, 1977 (37 Id. 107).
- B. Decisions of the General Directorate of Registries of January 22, 1886; 3 Coleccion Oficial, 451; May 9, 1889, 4 Id. 327.
- C. 1 Manresa's Commentaries of the Law of Civil Procedure.
- D. 2 Manresa's Commentaries on the Civil Code.
- E. 3 Scaevola's Commentaries on the Civil Code, p. 311.

F. *Sola v. Registrar* (March 25, 1905, 8 P. R. R. 205; *Santos v. Registrar* (Nov. 13, 1908), 14 P. R. R. 741.

In the light of the authorities hereinbefore cited we will now consider the doctrine of "*STARE DECISIS*" and of alleged rule of property.

A simple glance at the citations made by the petitioners and a comparison between them and that part of the decision of the P. R. Supreme Court which we have transcribed, will suffice to justify the conclusion that they substantially agree in their fundamentals and may be considered together.

In the year 1855, when Porto Rico was under Spanish sovereignty, a Law of Civil Procedure was enacted, article 1208 thereof prescribing that in *ex parte* proceedings the petitioner had his choice of courts. This law was repealed and on April 1, 1881 a new Law of Civil Procedure was passed to apply to the Spanish Peninsula and made extensive to the island of Porto Rico on January 1, 1886, by virtue of Royal Decree dated September 25, 1885. In this new enactment the provisions of article 1208 of the former law were entirely eliminated. In the year 1898 Spanish sovereignty ceased in Porto Rico and in 1900 the Congress of the United States enacted the Organic Act, known as the Foraker Act, for the Island, the new Territory forming ever since an integral part of the United States, with a native legislature, organized in accordance with the principles of American law and with powers

practically the same as those of the legislatures of any State of the Union.

Finally, on July 1, 1904, the new Code of Civil Procedure, which is still in force, went into effect, being almost a literal copy of the Codes of Civil Procedure of California, Idaho, and several other States of the American Union, as can be observed by a simple comparison between the various codes, except that jury trials were not made a part of the regular civil procedure in Porto Rico.

Now, the jurisprudence set out under group (a), namely, the judgments of the Supreme Court of Spain of July 22 and September 30 of 1875 and October 6, 1876, undoubtedly sustains that in *ex parte* proceedings the petitioner may choose his court and that such court is competent to take cognizance of the matter. But these decisions were rendered under the Law of Civil Procedure of the year 1855, according to which (section 1208) such line of procedure was authorized, which was not the case under the law of Civil Procedure that substituted such enactment. And under the sway of this latter law no like decision has ever been rendered by the Supreme Court of Spain and we challenge petitioners to cite a single case that has occurred in Spain under the law of 1881 which upholds such doctrine.

Consequently the decisions above referred to are without purpose and have no weight either as jurisprudence or otherwise.

The decisions of the General Directorate of Registries cited under group (b) are neither de-

cisions of the Supreme Court of Spain nor of the Supreme Court of Porto Rico and have no force as jurisprudence, inasmuch as the General Directorate of Registries of Spain is not a regular tribunal but simply a Board whose decisions are not binding upon courts of justice, since they are rendered in administrative appeals against the decisions of Registrars of Property.

“Decisions rendered in administrative appeals from decisions of registrars of property are not binding upon the courts” (*Martorell v. Ochoa*, 23 P. R. R. 28, at p. 29).

Hence, such decisions cannot be considered for purposes connected with the doctrine of *STARE DECISIS* or of rule of property.

Nor can the citations appearing under groups (c) and (d), namely, Manresa's Commentaries, be held to apply. Such a work can be considered by a court to illustrate a certain point but is not binding upon it, and a judge may or may not follow its indications, which again do not form a basis for reaching a conclusion in regard to the rule of *STARE DECISIS*. Moreover, in referring to the former law of Civil Procedure in connection with the sale of minors' property, the commentator relied on by the adverse party expresses himself in the work cited, as follows:

“As regards our Code there can be no doubt that for the alienation or encumbrance of real estate the authorization of the court is indispensable. The code requires that such authorization should be obtained from the judge of the domicile but as jurisdiction is a matter falling under the adjective law

and the final provisions of the code only repealed the common civil law, we think that paragraph 23 of article 63 of the Law of Civil Procedure, which provides that authorization for the sale of property of minors or incapacitated persons shall be given by the judge of the place where the property may be situated, or of the domicile of the persons to whom it belongs, continues in force and is complementary to this article. **HOWEVER, TO AVOID ANY QUESTION IT WILL BE MOST PRUDENT TO APPLY TO THE JUDGE OF THE DOMICILE.**" 2 Manrea's Commentaries on the Civ. Code, pp. 44-45, Third Edition.

As is seen, far from expressing a firm conviction of his ideas the author states that **"TO AVOID ANY QUESTION IT WILL BE MOST PRUDENT TO APPLY TO THE JUDGE OF THE DOMICILE."**

The citation made under group (e) fares no better than the preceding group, since, inasmuch as it refers to the opinion of a commentator, it cannot be considered for the purpose of establishing the doctrine of *STARE DECISIS*. But even if it could, a mere perusal of the following would suffice to show that his opinion does not favor the adverse party, even bearing in mind that the law construed in relation to the Civil Code was the former Law of Civil Procedure.

"According to said article 164 of the Spanish Civil Code, the authorization must be obtained from the judge of the domicile, and while it does not state whose domicile, such domicile is understood as being that of the parents, since it is acknowledged that,

according to art. 64 of the Law of Civil Procedure, the domicile of the children subject to Patria Potestas is the domicil of their parents. This same statute, by subdivision 23 of article 63 establishes as a judge of competent jurisdiction the judge of the domicil of the children and also the judge of the district where the property is situated, a wise and practical alternative provision since it is natural to suppose that there are more purchasers at the place where the value and the utility of the property are known than where such details are ignored. Shall this double jurisdiction continue in force? Although for the reasons stated later we are of the opinion that the Code did not and could not repeal the Law of Civil Procedure, the provisions of the Code in regard to this matter are conclusive, since it prescribes that the authorization SHALL BE SECURED FROM THE JUDGE OF THE DOMICIL." 3 *Scaevola's Commentaries on the Civil Code*, 309-310.

Finally, although the judgments of the Supreme Court of Porto Rico described under group (f), namely, *Sola v. Registrar*, 8 P. R. R. 205 and *Santos v. Registrar*, 14 P. R. R. 741, in general terms hold that in *ex parte* proceedings the petitioner may submit to the jurisdiction of a certain court, it is also a fact that the second of said judgments was rendered in the month of November, 1908, or subsequent to the issuance of the court's authorization and the sale giving rise to the present suit. Therefore, it cannot be considered as having any bearing upon the doctrine of *STARE DECISIS*. The

other case of *Sola v. Registrar*, has been discussed by us hereinbefore.

Now, in considering the case of *Garzot v. Rubio*, 209 U. S. 303, decided on April 6, 1908, the doctrine upheld in the judgments referred to was discarded and substituted by that established in *Esteras v. Arroyo*, 16 P. R. R. 689. Since then the theory of submission in *ex parte* proceeding has been utterly abandoned in the case of *Baerga v. Registrar*, 29 P. R. R. 440, recently decided by the Supreme Court of the Island, wherein said court refused to be concluded by the said judgments under consideration.

The lower court in disposing of said case held that, inasmuch as there was a special Act—the Mortgage Law—governing the matter and indicating the court that shall take cognizance of the matter, the general doctrine of submission must be rejected. And precisely in this case said court seeks to trace a difference between the point there at issue and the case of *Ajenjo v. Rosa*, 26 P. R. R. 648.

It will suffice to read the case in question to arrive at the conclusion that now, more than ever before, there are reasons for believing that the error committed by the Supreme Court of Porto Rico in the case now pending on certiorari is of such magnitude that it was justly corrected by the Circuit Court of Appeals for the First Circuit. The reason is very simple. If the Supreme Court of Porto Rico decided in the present case that in *ex parte* proceedings "THE LAW GIVES JURISDICTION TO THE

COURT TO WHICH APPLICATION IS MADE" there is no doubt that the decision just rendered in the case of *Baerga v. Registrar, supra*, constitutes a rejection of such doctrine and a re-establishment of the original doctrine, which is the rational and logical one and which originated when the Supreme Court of the United States decided the case of *Garzot v. Rubio, supra*.

Now, all the foregoing turns upon questions of *ex parte* proceedings in general. Nothing definite had been decided either in Spain or in Porto Rico in regard to the special proceedings provided for by section 229 of the Portorican Civil Code in force in 1908, which was in force when the sale of the property of the minor respondents (plaintiffs) herein took place. Said section reads as follows:

"The exercise of the Patria potestas does not authorize the father or mother to alienate or burden real property which in any manner belong to the child, and over which either of them have the administration, except after securing judicial authorization, which shall be accorded by the District Court of the Judicial District where said property is situated, upon proof being furnished as to the necessity or utility of such transfer or burden. The aforesaid judicial authorization shall not be required of the father or mother as the case may be, in order to receive the payment of an indebtedness due to the child, or to cancel any lien or mortgage securing the same."

In 1915 the Supreme Court of Porto Rico rendered a unanimous decision in the case of *Mar-*

torrell v. Ochoa (23 P. R. R. 28). And in construing section 164 of the former Civil Code, similar to the aforesaid section No. 229, the said Court expressed itself as follows:

"The plain language of article 164 of the Spanish Civil Code shows that the intention of the legislature in enacting that authorization of court should be necessary for alienating or encumbering the property of minors, was that such authorization should be granted by the judge of the domicile of the minor and not by any other judge, thus determining the authority which should complete the civil capacity of the father or the mother of the minor, which capacity can be completed only in the manner provided by said article."

Thus, it was here for the first time that the matter relative to the sale of minors' property in connection with the jurisdiction of the courts was construed. And it was conclusively held by the Supreme Court of Porto Rico that the only court having jurisdiction of the matter is the court mentioned in section 229 of the Civil Code. This theory was subsequently set aside in the same case (26 P. R. R. 689), which case was appealed to, and reversed by, the Circuit Court of Appeals, First Circuit (276 Fed. 99).

In the case of *Baerger v. Registrar*, 29 P. R. R. 440, the Supreme Court of Porto Rico, on May 20, 1921, said:

"The doctrine laid down in the case of *Sola v. Registrar of Property*, *supra*, does not refer to a case similar to the present case, for that case involved the recording

of a declaration of heirship while in this case it is sought to record a dominion title judgment. As regards the recording of dominion title judgments, we held in the case of *Nazario v. Registrar, supra*, that exclusive jurisdiction is conferred by article 395 of the Mortgage Law upon the Court of First Instance (now the District Court) of the district in which the property is situated, or in which the greatest part of it is situated in case of a property situated in several districts.

"That doctrine was not affected, as alleged by the appellant, by the later decision of this court in the case of *Ajenjo et al v. Santiago Rosa et al, supra*, for in that case there was no question of jurisdiction of dominion title proceedings, but of jurisdiction to authorize the alienation of property of minors.

"As the Mortgage Law makes *special provision for jurisdiction in dominion title proceedings in article 395*, that article must be followed (*italics ours*) and not the provisions of the Code of Civil Procedure governing the matter of jurisdiction in *ordinary cases* (*italics ours*).

"The General Directorate of Registries of Spain, in its decision of June 11, 1908, fixing the jurisdiction of possessory title proceedings, which the Mortgage Law confers upon the Court of First Instance of the district (now the District Court) wherein the property is situated, and under certain circumstances upon the municipal court, *corroborates* (*italics ours*) the jurisprudence laid down in the case of *Nazario v. Registrar, supra*, and that doctrine is now ratified."

We see, then, that the lower court draws a distinction between *ex parte* proceedings in general and such matters as are governed by special statutes or provisions. And the sale of property belonging to minors is regulated by section 229 of the Civil Code and by the Special Legal Proceedings Act (Sec. 80), this act being of such a special nature that even its title denotes it. Moreover, if according to the judgment we are now considering the Mortgage Law has not been affected by the jurisdiction which the case of *Sola v. Registrar, supra*, involves, why should it be affected in the present case in so far as concerns the property of minors? The Mortgage Law, also contains a special chapter devoted to minors' real estate, article 205 reading as follows:

"The father, or in a proper case, the mother, can not alienate the **real** property belonging to a child of which they enjoy the usufruct or administration, nor encumber it, except for established causes of utility or necessity, and with the authorization of the judge of the domicile, (now of the *situs*) granted after hearing the representative of the department of public prosecution."

Sec. 6889, *Comp. of the Rev. Stats. and Codes of P. R.*

If the premises are the same, the conclusions must also be the same.

THE DOCTRINE OF *STARE DECISIS* IS
NOT APPLICABLE.

In order to make the doctrine of *STARE DECISIS* applicable to this case the particular point under discussion would have had to be decided several times, thus determining a rule of property. Such is not the case. On May 27, 1908,—the date of the authorization of the court on which the present litigation is based,—no judgment either of the Supreme Court of Spain or of the Supreme Court of Porto Rico was of record holding that authorizations for the sale of property belonging to minors could be granted *BY ANY JUDGE OF THE ISLAND*. No such judgment was ever rendered either in Spain or in Porto Rico. It is manifest, therefore, that the doctrine of *STARE DECISIS* cannot properly be invoked because the essential requirement of precedent is lacking. (*Bragg v. Mayor*, 141 Fed. 118; *Cons. Rubber Co. v. Ferguson*, 183 Fed. 756.)

Of the two cases cited, namely, *Sola v. Registrar*, 8 P. R. R. 205 and *Santos v. Registrar*, 14 P. R. R. 741, we have already stated that the second was decided in November, 1908, or after the order of the court authorizing the sale in question had been made. Both cases are alike, the second being a consequence of the first. The theory of both could not be more mistaken and erroneous. And we are compelled to reiterate that, for this reason, the doctrine involved therein was at once rejected. *Esteras v. Arroyo*, 16 P. R. R. 689; *Nazario v. Registrar*, 16 P. R.

R. 365; *Martorell v. Ochoa*, 23 P. R. R. 28. Such a case cannot serve as a basis for the rule of *stare decisis*.

Hertz v. Woodman, 218 U. S. 205;
U. S. v. Southern Pacific Co., 230 Fed.
 270;

Meuge v. The Madrid, 40 Fed. 677.

Finally, we will cite from an old case which has been generally recognized by the courts as a true expression of a sound doctrine. We refer to the case of *McDowell v. Oyer*, 21 Pa. 417-423 in which the learned judge expressed himself as follows:

"Of course I am not saying that we must consecrate the mere blunders of those who went before us, and stumble every time we come to the place where they have stumbled. A palpable mistake, violating justice, reason and law, must be corrected, no matter by whom it may have been made. There are cases in our books which bear such marks of haste and inattention that they demand reconsideration. There are some which must be disregarded because they cannot be reconciled with others. There are old decisions of which the authority has become obsolete, by a total alteration in the circumstances of the country and the progress of opinion."

If nobody in Porto Rico regards said cases as precedents, the P. R. Supreme Court itself having discarded them, how can the opposing party seek to have this court sustain them in connection with the doctrine of *STARE DE-*

CISIS? (*Black, Law of Judicial Precedents*, p. 206.) Moreover, what has been decided in said cases does not cover the point at issue and even if it did, which we deny, the doctrine therein involved is so erroneous that it cannot serve as a basis for the rule of *STARE DECISIS*.

"It is the decision of the case of the Thomas Jefferson which mainly embarrasses the court in the present inquiry. We are sensible of the great weight to which it is entitled. But at the same time we are convinced, that if we follow it, we follow an erroneous decision into which the court fell, when the great importance of the question as it now presents itself could not be foreseen; and the subject did not therefore receive that deliberate consideration which at this time would have been given to it by the eminent men who presided here when that case was decided. For the decision was made in 1825, when the commerce on the rivers of the west and on the lakes was in its infancy, and of little importance, and but little regarded compared with that of the present day." *Genesee v. Fitzhugh*, 53 U. S. 455, 12 How, 455.

See also

Kilbourn v. Thompson, 103 U. S. 377.

The question in controversy is not a local one in matters of interpretation, and was properly reviewed and corrected by the Circuit Court of Appeals.

It is contended by petitioners that this case is based solely upon the construction given to Spanish decisions, and that, therefore, the judg-

ment of the P. R. Supreme Court should not have been reversed unless it was shown to be erroneous, citing various cases in support of such contention. This position is ill-founded and the cases cited are not applicable, if for no other reason, because the decisions of the P. R. Supreme Court was, as has been shown hereinbefore, manifestly erroneous.

A mere perusal of said cases is sufficient to show that they are not applicable to the case at bar, since here there is no dispute as to the facts in controversy and no local question is involved based on a disputed fact but precisely on what may perhaps be considered the most vital question that could be presented, involving as it does the sale of the property of minors who, though controlled directly by guardians, are nevertheless subject to the supreme tutorship which is exercised by the State through the two high branches of the government, the legislature and the courts of justice.

If, as alleged by petitioners, the Circuit Court of Appeals could not review a point of law of such magnitude as is involved herein, then it could never review an appeal from the P. R. Supreme Court, which is palpably absurd as is evident on its face. In point of fact, the Civil Code of Porto Rico already has been construed by the Circuit Court of Appeals in matters of unlawful detainer and there is no good ground for the hypothesis that its power so to do should be restricted in matters involving minors' property. *Central Vannina v. Lopez*, 259 Fed. 198.

The question in controversy was not decided in Porto Rico until the year 1915. And it was then held that the only court that could authorize the sale was the one designated in the Civil Code. *Martorell v. Ochoa*, 23 P. R. R. 28. This judgment was later reversed by a divided Court (*Martorell v. Ochoa*, 25 P. R. R. 707), two of its members dissenting. The majority opinion held that any court was empowered to authorize the sale, the letter and the spirit of the Civil Code notwithstanding. This later judgment was subsequently reversed by the Circuit Court of Appeals (*Martorell v. Ochoa*, 276 Fed. 99).

Minors cannot give consent. Nor can a guardian consent in their name. The State alone can cure the defect as to capacity and does so through the agency of an entity—the District Court. What District Court? The answer will be found in Section 229 of the Civil Code, as amended in 1907:

“The district court of the judicial district where the property is situated.”

This means that the lack of capacity on the part of the guardian is supplied by the consent of the court designated or appointed by the sovereign, the State, which designation is somewhat in the nature of an assignment of power, a power of attorney enabling the guardian to accomplish the act. This being the case the conclusion is inevitable that the court designated by statute *and no other* shall be the court competent to grant the authorization.

The legislature undoubtedly had in mind the fact that no court other than that where the property of the minor might be situated could better investigate and ascertain what was most suitable to the welfare and interests of the minor. For this reason it has clearly and distinctly designated the court charged with the duty of authorizing the sale. In the absence of such authorization on the part of the court the proceedings are necessarily null and void. In this connection, a principle of substantive law being involved, no general case can be applied by analogy unless it be one in which this question has been conclusively disposed of.

The rules in Louisiana and in Illinois also accord with the decision of the Circuit Court of Appeals herein.

The Civil Code of Porto Rico is very similar to the Louisiana Code, both having a common origin. *Garzot v. Rubio*, 209 U. S. 303. Besides, the former Law of Civil Procedure in Porto Rico was similar to that of Louisiana. We refer in this connection to the following citation from a case in said State where a matter somewhat similar to the one here on certiorari was discussed:

“An act of the legislature, 3 Martin’s Dig. 132, 17 requires the assent of the judge of the parish where the minor resides, to make an alienation of his property valid.

“The evidence here shows that the parties were not residents of New Orleans; the

father, a few days before the sale of the property, it is true made a declaration in this city that it was his intention to take up his permanent residence here, but the law requires more, a declaration before the judge of the parish from which the party removes as well as that where he intends to reside.

“Considering, therefore, that the proper domicile of the minor was in the parish of East Rogue, I am of the opinion that the whole of the proceedings before the court of probate were *coram non judice* and of course void.” *Leonard's Tutor v. Mandeville*, 3 La. Rep. 486; 9 Mart. (O. S.) 489.

See also:

Fletcher v. Cunclior, 4 La. 279;

Hawkins v. Livingston, 10 Martin, 440;

Foley v. Moorehouse, 13 La. Am. 301.

In the State of Illinois there is Statute reading as follows:

“On the petition of the guardian, the county court of the county where the ward resides, or if the ward does not reside in the state, of the county where the real estate, or some part of it is situated, may order the sale of the real estate of the ward, for his support and education, when the court shall deem it necessary, or to invest the proceeds in other real estate or for the purpose of otherwise investing the same.” *Revised Statutes of Illinois*, 1899, chapter 64, Section, p. 944.

This section is substantially similar to section 229 of the Civil Code of Porto Rico, both prior to and after its amendment in 1907.

In the case of *Spellman v. Dowse*, 79 Ill. 66, the Supreme Court of that State said:

“The requirement of the statute that an application by a guardian to sell the real estate of his ward shall be made in the county where the ward resides, or, in case the ward does not reside in the state, in some county where the whole or a part of the real estate is situated, *is jurisdictional* and any material deviation from these requirements, as to the court in which the proceedings must be had, *is fatal to the jurisdiction of the Court.* (Italics ours.)

The above quoted decision speaks for itself and needs no further comment.

“Because of their tender years and lack of experience, minors are favorites of the law. It is not uncommon to find exceptions in the law particularly favorable to them. For the reasons stated, to permit a probate court other than that of the county of the minor's domicile to take jurisdiction of his person and estate would be legislation discriminating against him.”

Cornell v. Moore, 70 Kan. 88, 78 Pac. 411-412.

“By ‘a district court of competent jurisdiction’ mentioned in Comp. St. c. 23, par. 64, subd. 1, relating to sales by guardians of real property of the ward, is meant the district court of the county in which the guardian was appointed.”

Puberman v. Evans, 46 Neb. 784 65 N. W. 1045.

See also

Loid v. Malone, 23 Ill. 43, 74 Am. Dec. 183

Section 229 of the Civil Code of this Island, as amended in 1907, requires the authorization of the Court of the District where the property is situated before the sale of property belonging to minors can be considered valid. This is a jurisdictional provision since it prescribes in a conclusive manner the only court having jurisdiction to decide the matter. And in holding the contrary, the P. R. Supreme Court clearly erred and its error was properly corrected on appeal, for the benefit of children in Porto Rico, by the Circuit Court of Appeals for the First Circuit.

For the foregoing reasons, respondents respectfully submit that the United States Circuit Court of Appeals for the First Circuit committed no error whatsoever, in reversing the decision of the Supreme Court of Porto Rico herein, and, therefore, the said respondents pray that the action, decision and judgment of the said Circuit Court of Appeals, First Circuit, may be affirmed in all respects.

JOSE A. POVENTUD,
FREDERICK S. TYLER,
FRANK ANTONSANTI,
Attorneys for Respondents.

**DIAZ, IN HIS OWN RIGHT, ETC., ET AL. v. CAR-
LOTA AND CLEMENTINA GONZALEZ Y LUGO,
ETC., ET AL.**

**CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT.**

No. 263. Argued January 24, 1923.—Decided February 19, 1923.

1. Power to authorize a parent to sell the interest of a minor child in land in Porto Rico, is not limited by the Porto Rican Civil Code, § 229 as amended in 1907, to the District Court of the Judicial District in which the property is situated, but may be exercised, under §§ 76 and 77 of the Code of Civ. Proc. 1904, by the court of another District to which the *ex parte* application is submitted. P. 103.
 2. An interpretation of law which has become a rule of property, accepted by the practise of a community, should not be disturbed unless certainly wrong. P. 105.
 3. Peculiar deference is due from this Court to the views of local matters taken by courts which, like the courts of Porto Rico, have inherited and been brought up in a different system of law to that which prevails here. P. 105.
- 276 Fed. 108, reversed.

CERTIORARI to a judgment of the Circuit Court of Appeals reversing one by the Supreme Court of Porto Rico in favor of the present respondents in their suit to set aside a sale of land.

Mr. Cornelius C. Webster, with whom *Mr. Jose R. F. Savage* was on the brief, for petitioners.

Mr. Jose A. Poventud, with whom *Mr. Frederick S. Tyler* and *Mr. Frank Antonsanti* were on the brief, for respondents.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit brought by the respondents to establish the nullity of a sale of their land while they were all minors. The Supreme Court of Porto Rico upheld the sale and ordered the complaint to be dismissed, 27 P. R. 364; but the judgment was reversed by the Circuit Court of Appeals, 276 Fed. 108, following another decision made by it at the same term. *Agenjo v. Agenjo*, 276 Fed. 105. Thereupon a writ of certiorari was granted by this Court.

The father of the respondents (plaintiffs) died in 1904, owning the land in question, and the title passed to his widow and his children, the plaintiffs. The land is in the judicial district of Humacao. In 1908 the widow obtained authority to make the sale from the District Court of the judicial district of San Juan and the sale was made. This suit proceeds on the ground that only the Court of the judicial district where the land was situated had power to authorize the sale of the minors' interest in the land.

The argument that prevailed with the Circuit Court of Appeals is forcible and perhaps might prevail with us if we looked at the face of the statutes invoked, without more. By § 229 of the Civil Code of Porto Rico, as amended by an Act of March 14, 1907, Laws of 1907,

p. 284, "The exercise of the *patria potestas* does not authorize the father or mother to alienate or burden real property which in any manner belongs to the child, and over which either of them have the administration, except after securing judicial authorization, which shall be accorded by the District Court of the Judicial District where said property is situated, upon proof being furnished as to the necessity or utility of such transfer or burden." This naturally enough is taken to mean that the Court of that district alone can give the authority required. The interpretation gains further force when it is known that this section of the Civil Code of 1902 originally gave the power to the District Court of the minors' domicile and that it was amended to its present form in 1907, with a provision, in case of a sale by auction, for a publication in a newspaper having a circulation in the district. It certainly is not unnatural to read the quoted section as excluding the application of the more general §§ 76 and 77 of the Code of Civil Procedure, 1904, by which, (76,) "In accordance with its jurisdiction, a court shall have cognizance of the suits to which the maintenance of all kinds of actions may give rise, when the parties have agreed to submit the suit to decision of court." (77) "The submission shall be understood to be made: 1. By the written agreement of the parties. 2. By the plaintiff through the mere act of applying to the court and filing the complaint. 3. By the defendant when, after his appearance in court, he takes any step other than to request that the trial be held in the proper court."

One might doubt even whether the last cited sections apply to any *ex parte* proceedings. The respondents made the most of the doubt. But those sections embody earlier law and practise and we accept the conclusion of the Supreme Court that they have been taken to extend to such cases. *Martorell v. Ochoa*, 26 P. R. 625. *Agenjo v. Santiago Rosa*, 26 P. R. 648. The most forcible objec-

tion is that which we have stated; that a special law definitely applicable limits general expressions in other laws that otherwise might be sufficient. We will not repeat the argument quoted from Manresa and Scaevola that jurisdiction is a matter of adjective law and that the general provisions with regard to it are not repealed by a repeal of the substantive law or change in the Civil Code. 26 P. R. 631, 632. We will do no more than note Manresa's conclusion that although it would be more prudent to apply to the Judge specially designated, any Judge having jurisdiction of this class of cases is made competent by the submission implied from invoking his action. The distinction taken seems to be similar to that which we take between jurisdiction and venue. *Martorell v. Ochoa*, 25 P. R. 707, 729. A mistake as to the latter is waived by submission, *Lee v. Chesapeake & Ohio Ry. Co.*, 260 U. S. 653, and in the Porto Rican law an *ex parte* application is an adequate submission. This is a perfectly intelligible view, and when we are assured by the Supreme Court that it long has been taken, 25 P. R. 729; 26 P. R. 634; interrupted only by a momentary obstruction caused perhaps by accepting too broadly and absolutely an expression in *Garzot v. De Rubio*, 209 U. S. 283, 303, we see no reason for not taking it here. The fact alleged that this interpretation of the law has become a rule of property, 25 P. R. 730, is very important and is not weakened by there being only a small number of decisions on the point. If it has been accepted by the practise of the community it should not be disturbed except upon an unescapable conclusion that it is wrong.

This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite *De Villanueva v. Villanueva*, 239 U. S. 293, 299. *Nadal v. May*, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a differ-

ent system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books. In this case a slight difference in the caution felt in dealing with the interest of minors (*Baerga v. Registrar of Humacao*, 29 P. R. 440, 442,) and a slight change of emphasis in the reading of statutes, explain the divergence between the Supreme Court and the Circuit Court of Appeals. Our appellate jurisdiction is not given for the purpose of remodelling the Spanish American law according to common law conceptions except so far as that law has to bend to the expressed will of the United States. The importance that we attribute to these considerations led to our granting the writ of certiorari and requires us to reverse the judgment below.

Judgment of Circuit Court of Appeals reversed. Judgment of Supreme Court of Porto Rico affirmed.